AMERICAN CHURCH LAW

A GUIDE AND MANUAL FOR RECTORS, WARDENS, AND VESTRYMEN

OF

THE PROTESTANT EPISCOPAL CHURCH IN THE UNITED STATES OF AMERICA

New Edition, Thoroughly Revised and Brought into Harmony with the Constitution and Canons of 1910 and the Statute Laws and Canons of the Several States and Dioceses

By the Reverend
EDWIN AUGUSTINE WHITE, D.C.L.
Presbyter of the Diocese of Newark
Sometime Attorney and Counsellor-at-Law

NEW YORK
EDWIN S. GORHAM, *Publisher*
37 East 28th Street
1911

PREFACE TO THE NEW EDITION.

IN sending forth the Second Edition of American Church Law I cannot forbear to express my thanks to the many Bishops, Clergy and Laymen of the Church for their kind recognition of this effort to give them an exposition of their legal rights and duties. Since the publication of the First Edition, the Constitution and Canons of the General Convention have undergone a radical revision. Many changes have also been made in the Constitution and Canons of the several Dioceses, and in the Statute Laws affecting the Church, of the various States. The present Edition has been thoroughly revised and corrected to conform to these changes.

E. A. W.

EASTER-TIDE, 1911.

PREFACE.

IT IS not without some hesitation that the author presents this work to his brethren of the Church. Its appearance is due to the request of many of both clergy and laity, and to their representations that the information it contains has long been needed.

The object of this book is two-fold: First, to trace the continuity of the Church, known as "the Protestant Episcopal Church in the United States of America," with the "Church of England"; to show that the Church in America is no new creation, formed by the Convention of 1789, but that she is the same identical body formerly known as the Church of England in the Colonies, "the change of name being only a dictate of the change of circumstances"; that, as she professes the same doctrine, and engages in the same worship, so doth she hold to the same discipline with the Church of England; and that the English Ecclesiastical Law is of force in the American Church to-day, so far as it is applicable to our circumstances, and not superseded by positive enactments of our own.

Second, To give the Law of the Church in America, with citations of authorities, civil and ecclesiastical.

For this purpose, the author has deemed it advisable to divide the work into two parts. Part I., "Sources and Sanctions of American Church Law," includes the first object of the work. Part II., "The Law of the Church," includes the second object.

The author has not endeavored to set forth a complete compendium of the whole Law of the Church, only of that portion which relates to the rights and duties of Rectors, Wardens and Vestrymen in their joint and several relations, and to the proper conduct of parochial matters.

In interpreting the law, and applying the decisions of the courts and the opinions of authorities to propositions stated, the author has sought to be guided by the principles which were once familiar

to him as a practising lawyer, and which, he trusts, he has not entirely forgotten. Conscious, however, of his liability to err in judgment, he has submitted his manuscript to an able jurist among the laity, learned also in Ecclesiastical Law, and much of it to one of the most learned of the clergy of the Church, and availed himself of their suggestions.

The reader will, of course, understand that by the "American Church" in the following pages is meant the "Protestant Episcopal Church in the United States of America"; the title "American Church" being used simply for brevity, and to avoid the constant repetition of one that is awkward and cumbersome.

By request of a number of the clergy, the author has added a supplement, containing certain "Rules of Order," with explanations of the same, which he trusts may prove helpful to the Rectors of Parishes in the conduct of Parish and Vestry meetings.

Appendices, containing certain forms required for different purposes by the General or Diocesan Canons of the Church, have also been added. The author has refrained from inserting any forms required by the Statute Law, as such forms are so materially variant in the different States as to render it impossible to set forth any that would be of practical value in any considerable number of Dioceses.

The services of one learned in legal lore should, in most cases, be employed in the drawing up of statutory forms.

The author trusts that this work may not only be found useful as a guide and authority for Rectors, Wardens and Vestrymen in the various matters with which they may have to deal, but also that it may serve as an educator for Churchmen concerning the principles and laws of their Church.

In conclusion, the author desires to express to the secretaries of the several Diocesan Conventions his appreciation of their kindness in furnishing him with copies of the Constitutions and Canons of their respective Dioceses.

E. A. W.

CHRIST CHURCH RECTORY,
Bloomfield, New Jersey, June, 1898.

CONTENTS.

PART I.

Sources and Sanctions of American Church Law.

CHAPTER I.

OF THE ENGLISH ECCLESIASTICAL LAW.

PAGE

Statement of the four Codes or systems of laws and regulations, which admittedly govern the Church..... 15

Statement of claim that a fifth Code, viz., The English Ecclesiastical Law, is also in force in the American Church, so far as it is applicable and not superseded by enactments of our own..... 15

Statement of three propositions regarding the English Ecclesiastical Law. 1st. That it was the Law of the Church in the Colonies up to the time of the Revolution, 1775. 2d. That it was the Law of the Church during the Revolutionary War, and after the war, up to the holding of the first complete Convention of the Church in 1789. 3d. That it continued to be the Law of the Church after 1789 and remains the Law of the Church to-day, so far as it is applicable and not superseded by enactments of our own. 16

Question considered, How much of the English Law, Common and Statute, the Colonists brought with them..... 17

Laws or Codes of Law the subjects of inheritance..... 18

Common Law of England, the birthright of the Colonists..... 19

Common and Statute Law of England, the Common Law of the Colonists..... 21

Development of English Ecclesiastical Law during five periods —British period to 597—Anglo-Saxon period to 1066—

Anglo-Roman period to Reformation—Anglican period to time of Colonization of America..... 23
Date of Colonization..... 33
The English Ecclesiastical Law in force at time of Colonization..... 34
A Common Law Ecclesiastical, forming part of the great body of Common Law..... 37

CHAPTER II.

OF THE ENGLISH ECCLESIASTICAL LAW IN THE COLONIES AND THE STATES PRIOR TO 1789.

Common Law Ecclesiastical, and Canon Law of the Church of England, part of the Common Law of the Colonies..... 40
Church of England in the Colonies. *First proposition*, That the English Ecclesiastical Law was the Law of the Church in the Colonies up to the time of the Revolution..... 42
Colonial legislation relating to the Church in the different Colonies..... 43
Relation of the Society for the Propagation of the Gospel in Foreign Parts to the Colonial Church..... 46
Bishop of London, Diocesan of the Colonial Church. His jurisdiction acknowledged and recognized..... 47
Colonial Church identical with Church of England and governed by English Ecclesiastical Law..... 50
Consideration of *second proposition*, That the English Ecclesiastical Law was the law of the Church during the Revolution and thereafter until 1789..... 51
Continuity of the Church's identity. Citations of historical facts and authorities, showing the mind of the Church regarding her identity..... 52

An undeniable proposition stated. Deductions therefrom proving continued identity of the Church with the Church of England and that it continued to be governed by the English Ecclesiastical Law up to 1789..... 58

CHAPTER III.

OF THE ENGLISH ECCLESIASTICAL LAW IN THE STATES SUBSEQUENT TO 1789.

Action taken by the Churches in the several States for a union thereof..... 64

The Conventions of 1789 and 1792, their authority, aims and enactments..... 75

The American Church after 1789 essentially identical and continuous with the Church of England..... 86

Consideration of the *third proposition*, That the English Ecclesiastical Law continued to be a part of the Law of the American Church after 1789, and remains a part of the Law to-day, so far as it is applicable and not superseded by enactments of our own..... 92

Intent of the Church as to the continuing force and obligation of the English Ecclesiastical Law..... 92

Concordat of the American Church with the Church of England in order to have American Bishops consecrated in England..... 96

The Common Law, the Law of the several States. Argument stated..... 104

Argument from propositions proven as to the continuous and binding force of English Ecclesiastical Law..... 104

Citation of authorities, and opinions of the courts as to the

continuing force and obligation of the English Ecclesiastical Law in the American Church..... 106
Conclusions derived from preceding investigations..... 110

PART II.

The Law of the American Church.

CHAPTER I.

OF INCORPORATION OF CHURCHES.

Purpose and benefits of Incorporation..... 117
Statutory and Canonical requirements for Incorporation..... 118
Notice to be given. How, when and where..... 120
Place of meeting..... 121
Requirements for valid meeting. Quorum. Officers..... 121
Scope of meeting..... 123
Who may vote..... 124
Conduct of election, and qualifications of officers..... 125
Certificate of election..... 126
Terms of officers elected..... 129
When Incorporation complete..... 129

CHAPTER II.

OF ANNUAL PARISH MEETINGS.

When and where held..... 131
Requirements of notice..... 131
Purpose of meeting. What questions may be considered..... 132

Quorum 134
Presiding officer of meeting; his rights and duties 135
Qualifications of voters 139
Qualifications of Wardens and Vestrymen 145
Certificate of election 148
Special Parish meetings; when necessary; how called and conducted 149
Name of Parish, how changed 151

CHAPTER III.

OF THE VESTRY.

Component parts 153
Their powers; how derived, and how construed 154
Their custody of the real estate of the Corporation 157
Must act in their corporate capacity 161
The extent of their power over the Church buildings 162
Pews and pewholders 164
Their custody of the Church revenues 165
By-laws 167
Their power to elect a Rector 168
Not an Exclusive Power 175
Extent of their power in the selection of organist, members of the choir, etc. 179
In absence of Statute Law, cannot alienate Church property without consent of Rector 182
Vacancies in a vestry, how filled 186
Change in number of Vestrymen, how made 187

CHAPTER IV.

OF VESTRY MEETINGS.

By whom called 190
Notice ; how given and when 191
When meeting legal without notice 192
Quorum. Presence of each of three integral parts necessary. 193
Presiding officer ; his rights and duties 197
Casting vote 199
Business ; how conducted 202
When meetings legal without presence of Rector 204

CHAPTER V.

OF THE RECTOR.

His election and call 207
Letters of Transfer 209
A qualified Minister 211
Bishop's consent necessary before election valid 211
Office of Institution discussed. Powers of Rector thereunder. 223
Is called for life 240
Dissolution of Rectorship 241
Right to a hearing before Rectorship can be terminated 245
Trial of a Clergyman 252
An integral part of the Vestry 254
Right to call Parish and Vestry meetings 254
Presiding officer at Parish and Vestry meetings 255
Right to vote, and give casting vote in case of tie 255
Right to decide as to qualifications of voters 255
Right to the keys and control of the church and other parish buildings 256

Exclusive control over the services of the Church..... 264
Control over the music of the Church..... 267
His right to appoint the organist and members of the choir... 270
Control of the organ..... 274
Control over the ornaments of the Church..... 275
His right to repel from the Holy Communion..... 279
His right to appoint Assistant Minister..... 285
The Rector's duties..... 286

CHAPTER VI.

OF WARDENS AND VESTRYMEN.

Brief history of the office and duties of Church Warden in the Church of England..... 289
Duties of Wardens..... 295
Qualifications of Wardens..... 299
How appointed..... 299
Wardens must act together; no power separately unless specially delegated..... 302
Have the custody of the Church under the Rector..... 304
Vestrymen..... 306
Qualifications of Vestrymen..... 307
Have no power as separate members of the Vestry; can only act in Vestry assembled..... 307
Duties of Vestrymen..... 308

SUPPLEMENT.

WITH RULES OF ORDER.

Rules of Order for the proper Conduct of Parish and Vestry Meetings..... 313

APPENDICES.

WITH FORMS.

A. Forms for the Incorporation of Churches..... 321
B. Forms of Notice of Annual Elections..... 323
C. Forms relating to the Election of Wardens and Vestrymen 324
D. Forms of Certificate of Lay Deputies to Diocesan Conventions..... 326
E. Forms relating to the Transfer of real Church Property.... 327
F. Forms for Organizing Missions and Parishes..... 329
G. Forms for Postulants and Candidates for Holy Orders..... 333
H. Miscellaneous Forms..... 344

TABLE OF CASES..... 349
INDEX..... 355

PART ONE.

The Sources and Sanctions of American Church Law.

CHAPTER I.

OF THE ENGLISH ECCLESIASTICAL LAW.

IT IS necessary that we first come to a clear understanding as to what constitutes the laws and regulations for the government of the Church, before proceeding to apply those laws and regulations to particular cases.

It may be assumed, as beyond question, that there are at least these four systems or codes of law to which the Protestant Episcopal Church in the United States of America is subject, and by which it is governed:

First. The Book of Common Prayer, its Rubrics, and, in some particulars, the Articles.

Second. The Constitution and Canons of the Church, as set forth and established by the General Convention.

Third. The Constitution and Canons of the Church in the several dioceses, of force only in the respective dioceses, and subordinate to the authority of the General Convention.

Fourth. "The Civil laws of the States affecting the Church and its members, in regard to corporate and personal rights, civil privileges, and the acquisition and preservation of property."

To these four codes, to which the Church is admittedly subject, should be added, in the opinion of most of our canonists, a

Fifth. The English Ecclesiastical Law in force at the time of the colonization of America, so far as it is ap-

plicable to our condition and circumstances, and not superseded by enactments of our own, forming the Common Law of the Church in the United States.

This opinion is controverted by a few canonists, who take the position "that no part of the English Ecclesiastical Law is, or ever has been, as such, of binding obligation" in the American Church.

There is no question as to the binding obligation upon the Church of the first four Codes of Law above stated: the only question is, as to the force and operation of the English Ecclesiastical Law upon the Church in the United States, but a most important question, for upon the accepted answer thereto depends the character of our whole system of Ecclesiastical jurisprudence.

In my judgment, the only answer that can be given to this question, the only answer that is morally, historically and legally correct, is an affirmative one; that the Ecclesiastical Law of England, in force at the time of the colonization of America, is, so far as it is applicable to our condition and circumstances, and not superseded by enactments of our own, of force and obligation in our Church to-day.

Firm in this belief, I shall seek to prove, by citations from the opinions of men learned in legal lore, from the decisions of our highest courts, both State and National, from the opinions of individual Bishops, and of the House of Bishops, and from the declarations of the Church herself in General Convention assembled, that the Ecclesiastical Law of England, with certain modifications, was the law of the Church in the Colonies up to the time of their separation from the mother country in 1776; that it was the law of

the Church during the Revolutionary War, and thereafter, until 1789, when the Church, complete in her three orders of the ministry, came into possession of all the constituent elements of a Church, and first assumed the form and character of a National Church; and that it was then, thereafter, and still continues to be, the law of the American Church, so far as it is adapted to our circumstances and not superseded by legislation of our own.

In order to fully appreciate the arguments, both for and against the position that the American Church is or has been under the government of English Church Law, or any portion thereof, it will be necessary to first consider briefly the question, as to how much, if any, of the Common Law of England, together with the Statute Law thereof, in force at the time of the emigration of the Colonists, they brought with them to this country. The analogies of the Common Law of the State have so important a bearing upon the Ecclesiastical Common Law as to make such a consideration imperative.

Judge Hoffman in his "*Law of the Church*" (*p.* 14) lays down what he calls an *admitted maxim*, "that the great body of the Common Law of England, and of its Statute Law, so far as adapted to the situation of the Colonies, was brought to this land from the mother country, and formed the basis of Colonial Law." Undeniable as this proposition seems to be, yet it is not admitted by some who endeavor to prove that English Ecclesiastical Law has no binding force in the American Church, and who claim that neither a Nation nor a Church can "inherit a law"; that the laws of one Nation or Church can only become the laws of

another Nation or Church, though once subject to that Nation or Church, by "adoption or consent, either express or by such clear implication as to be equivalent to a legislative act."

The theory, by them advanced, seems to resolve itself into some such proposition as this, that a law or code of laws cannot pass by inheritance from one Nation or Church to another Nation or Church, however close their relations may have been or still may be. Such a proposition I believe to be untenable, and opposed to the uniform opinions of our learned jurists, and the decisions of our highest courts.

And first, what is the meaning and scope of the verb "*to inherit*"? Among the definitions of the word are these: "To get by succession as the representative of the former possessor"; "to receive as a right or title descendible by law from an ancestor at his decease"; "to receive by transmission in any way"; "to have imparted to, or conferred upon"; "to acquire from any source"; "to possess"; "to enjoy"; "to become possessed of"; "to take as a possession by gift or divine appropriation."

"Inheritance" is also defined as "a possession received by gift or without purchase, a permanent possession." "Possession, ownership, acquisition," "a birthright, a right to which one is entitled by birth." "Birthright" is defined as "any right or privilege to which a person is entitled by birth, such as an estate descendible by law to an heir, or civil liberty under a free constitution." It "is applicable to any right which results from descent." From these definitions it follows that a right to which we are entitled by birth is a birthright.

If we are subject to a law, then are we entitled to receive whatever benefits and protection that law is capable of bestowing, and if entitled to it, then is it our birthright.

No one will deny that the Colonists were subject to the laws of England, and therefore entitled to the benefits and protection of those laws: but if entitled to them, then were those laws, including the Common Law, their birthright, which they took with them, as they took their nature, whenever they transferred their domicile from the mother country to a daughter colony The truth of this conclusion, that the Common Law of England was the birthright of the Colonists, and was brought to America by them, is well attested by the great commentators on law and by the decisions of the courts.

In his work on the Constitution, Judge Story, one of the ablest jurists this or any other country has produced, says: "Ever since the settlement of the Colonies, the universal principle has been, that the Common Law is our *birthright and inheritance*, and that our ancestors brought hither with them, upon their emigration, all of it which was applicable to their situation."—(1 *Story on the Con.*, 5*th Ed.*, *Sec.* 157.)

Chancellor Kent, in his Commentaries on American Law, says: "It is a principle in the English Law, that English subjects going to a new and uninhabited country, carry with them, as *their birthright*, the Laws of England existing when the colonization takes place."—(1 *Kent's Com.*, 14*th Ed.*, 473, *Note b.*)

Chancellor Walworth in pronouncing the opinion of the court in *DeRuyter* v. *Trustees of St. Peter's Church* (3 *Barb. Chan. Rep.*, 114), uses this language:

"It is a natural presumption and therefore adopted as a rule of law, that on the settlement of a new territory by a colony from another country, and where the Colonists continued subject to the government of the mother country, they carry with them the general laws of that country so far as those laws are applicable to the Colonists in their new situation, which thus become the unwritten law of the colony until altered by common consent or legislative enactment."

Judge Story, in pronouncing the opinion of the Supreme Court of the United States in *the Town of Pawlet* v. *Clark et al.* (9 *Cranch*, 296), says:

"Independent, however, of such a provision, we take it to be a clear principle that the Common Law in force at the emigration of our ancestors is deemed the *birthright* of the Colonies, unless so far as it is inapplicable to their situation or repugnant to their own rights and privileges." And in the same court, in the case of *Van Ness* v. *Packard* (2 *Peters*, 137), he says, speaking of the Common Law of England, "Our ancestors brought with them its general principles, and claimed it as their birthright."

Other authorities to the same effect, might be cited almost *ad infinitum*, but those already cited are sufficient to prove the correctness of the propositions sought to be proven thereby, viz.: *First*, that laws, or systems of laws are the subject of inheritance and claimable by birthright; *second*, that the Common Law of England was the birthright of the Colonists; and *third*, that they claimed this birthright, and brought with them to this country the great body of that Common Law forming the basis of the Colonial Law.

The question next arises, Of what did this body of Common Law, which the Colonists brought with them, consist? A question all the more important because of its bearing, by analogy, upon the question to be considered later, as to the extent, if any, of the force and obligation of the Canon Law of England, (as part of the Ecclesiastical Law thereof) upon the American Church.

No better definition of Common Law can be given than Judge Blackstone gives in his Commentaries, which are universally recognized as of the highest authority. He says: "The *lex non scripta*, or unwritten law, includes not only general customs, or the Common Law, properly so called, but also the particular customs of certain parts of the kingdom; and likewise those particular laws that are by custom observed only in certain courts and jurisdictions. . . . The monuments and evidences of our legal customs are contained in the records of the several courts of justice, in books of reports and judicial systems, and in the treatises of learned sages of the profession, preserved and handed down to us from the times of highest antiquity."—(*Blackstone's Com.* [*Hammond's Ed.*] 166.)

But the body of Common Law, which the Colonists inherited, and brought over with them to this country, consisted not alone of the *lex non scripta*, but also of a part of the *lex scripta*, the Statute Law of England at the time of their emigration, "applicable to their situation, and in amendment of the law." This is a well-established doctrine, as stated by Chancellor Kent: "It is also the established doctrine that English Statutes, passed before the emigration of our ancestors, and applicable to our situation, and in amendment of the law,

constitute a part of the Common Law of this country." —(1 *Kent Com.*, 14*th Ed*, 473.)

The doctrine is also well-expressed by Mr. West in an opinion given in 1720. "The Common Law of England is the Common Law of the Plantations, and so all statutes in affirmance of the Common Law antecedent to the settlement of a colony, unless there is some private Act to the contrary; though no statutes made since those settlements are there in force, unless the colonies are particularly named. Let an Englishman go where he will, he bears as much of law and liberty with him as the nature of things will bear."—(*Chalmers'* "*Opinions of Eminent Lawyers*," *p.* 206.)

The first Continental Congress also claimed the benefit of this Statute Law of England as Kent tells us in his Commentaries. He says:

"The Congress of 1774 claimed to be entitled to the benefit, not only of the Common Law of England, but of such of the English Statutes as existed at the time of their colonization, and which they had by experience respectively found to be applicable to their several local and other circumstances."—("*Journals of Congress*," *October* 14, 1774.) (1 *Kent*, 14*th Ed.*, 473, *Note* (*b*))

The highest courts of this country have universally taken the same view. Chancellor Walworth says:

"The Common Law of the mother country as modified by positive enactments, together with the Statute Laws, which are in force at the time of the emigration of the Colonists, became in fact the Common Law rather than the Common and Statute Law of the Colony. The Statute Law of the mother country, therefore, when introduced into the Colony of New York by com-

mon consent, because it was applicable to the Colonists in their new situation, and not by legislative enactment, became a part of the Common Law of this province."—(*Bogardus* v. *Trinity Church.* 4 *Paige Ch. Rep.*, 178.) (Cited and approved in 46 *N. Y. Rep.*, 131.) (See also *De Ruyter* v. *Trustees et al.*, 3 *Barb. Ch. Rep.*, 119; *Canal Appraisers* v. *the People et al.*, 17 *Wend.*, 571; *Humbert* v. *St. Stephen's Church*, 1 *Edwards' Ch. Rep.* 308; *Commonwealth* v. *Leach et al.* 1 *Mass.* 60; *Same* v. *Knowlton*, 2 *Mass.*, 534; *Sackett* v. *Sackett*, 8 *Pick*, 309; *Patterson* v. *Winn*, 5 *Peters*, 232; *Boehm* v. *Engle*, 1 *Dallas*, 19.)

Having, in my judgment, established conclusively the truth of the proposition that the Colonists brought with them not only the Common Law of England but also such of the English Statutes as existed at the time of their emigration, and which they had found applicable to them in their new situation, and observing that such statutes formed a part of the Common Law of the Colonists, let us now turn our attention to the Ecclesiastical Law of England, and observe what composed that Law at the time of the colonization of America.

A brief review of the history and development of the English Ecclesiastical Law will help us to a more correct understanding as to what constituted that Law at the time mentioned.

We find from the decisions of the English jurists, that even before the landing of St. Augustine upon the shores of Britain, there had grown up a body of Common Ecclesiastical Law, separate and distinct from the Ecclesiastical Law that prevailed among the Churches on the continent.

Dawson in his "*Origin of Laws*," after reviewing the history of the Church in certain particulars in the first six centuries, says: "From all which put together and well considered, these four things are plain and easy to be observed. *First*, that the Britannic Church had its ancient laws and customs; and, by consequence, had an established way and form of government long before those days [the coming of St. Augustine]. *Secondly*, that it was held unlawful for them to change or alter any of these laws or customs *sine consensu suorum*, as Bede [expresses it]; *sine consensu suæ gentis*, as Alfred [says]; and, by consequence, that all Ecclesiastical matters were determined among themselves, and within the boundaries of their own Nation, and not in any wise subject to any Foreign Power and Jurisdiction. *Thirdly*, that the way which was used by them, for the determining of such matters, was that of a National Synod. And, *lastly*, that the usual members of those Synods were *optimates suorum*, *et alii viri docti*, by which we suppose to be meant their bishops and other learned men of the clergy; because Bede tells us, in the next words, that when the business about calling another Synod was agreed on, there met together, in a Synod, seven British Bishops and a great many other very learned men.—(*Book* VI., *Cap.* 4.)

Augustine, Abbot of St. Andrew's in Rome, and the representative of Pope Gregory, arrived in Britain in the year 597, and while he endeavored to bring the British Church into communion with the Roman Pontiff, there is no evidence that he made any great or material change in its ancient laws and customs. On the contrary, when he wrote to Pope Gregory complaining of the divergence of customs in the British Church

from the Roman Church, Gregory replied, "We are not to love customs on account of the place from whence they come, but let us love all places where good customs are observed. Choose, therefore, from every Church whatever is pious, religious, and well ordered; and when you have made a bundle of good rules, leave them for your best legacy to the English."

A Synod of seven British Bishops met Augustine at a place afterward called "Augustine's Oak," A.D. 601. He offered to receive them into union with the Roman Church if they would consent to three changes in their customs, viz.: The celebration of Easter at the proper time, the performance of the Rite of Baptism according to the custom of the Roman Church, and join with him in preaching the Gospel to the English Nation, promising on the part of Rome, "We will readily tolerate all the other things you do, though contrary to our customs."

From the time of Augustine down to the Conquest, A.D. 1066, there is a variety of original documents in existence which give us much information as to the Canons and Laws which prevailed during that time.

The Record Commission of 1821, by gathering these various documents together, has thrown great light upon the antiquities of English Law. The laws of the Saxon kings are published in a volume called "Ancient Institutions of England." A certain portion of these laws are called "*Monumenta Ecclesiastica*," and relate in many particulars to the affairs of the Church. Among these *Monumenta* is a work called "*Liber Penitentialis* of Theodore, Archbishop of Canterbury," who, we are told by Kemble in his "*Saxons in England*," "was the first Archbishop whose authority was uni-

versally acknowledged in England." It consisted of "a full code of regulations concerning penance, made in the year 669, and by the authority, it would seem, of the Archbishop alone."

Frequent Synods, or "Gemotes," as Lord Coke tells us Synods were termed in Saxon times, were held during the Saxon period. Judge Hoffman in "*The Law of the Church*" (*pp.* 49–53), mentions several of these Gemotes with citations of their acts, and from them draws this conclusion: "From these citations there is ample reason to conclude that a great principle of the Saxon Church was that which we find so strongly asserted in later times, viz.: that while the councils of the clergy were sufficient to establish laws for the government of the clergy, yet where the laity were concerned, they must have been passed or ratified by the Witan, in which a representation of that order existed." To establish the correctness of his conclusion, that no laws could be passed binding upon the laity, unless passed or ratified by some council in which they had a representation, he cites the following:

"Even so in the Saxon times, if there was any subject of laws for the outward peace and temporal government of the Church, such laws were properly ordained by the king and his great council of clergy and laity intermixed, as our Acts of Parliament are still made. But if there was any doctrine to be tried, or any exercise of pure discipline to be reformed, then the clergy of the great Synod departed into a separate Synod, and there acted as the proper judges; only when they had thus provided for the state of religion, they brought their canons from the Synod to the great council, to be ratified by the king with the advice of

his great men, and so made the constitutions of the Church to be the laws of the realm. And the Norman revolution made no change in this respect. Thus the case stood till the Act of Submission of 25th Henry VIII."—(*Kenneth*, "*Ecclesiastical Synods*," *p.* 249.)

In the year 1066, William the Conqueror, a Norman, ascended the throne of England. From that time down to the Reformation, the legislation of the Church (exclusive of the Acts of Parliament) is contained in the legatine and provincial constitutions.

The legatine constitutions are to be found in the ordinances of Otho (A.D. 1237), and Othobon (A.D. 1268); the provincial constitutions, in the constitutions of the Archbishops of that period. Regarding the legal force of these legatine constitutions, Judge Hoffman ("*Law of the Church*," *p.* 54) says: "There is much reason to believe that the laws of the legates Otho and Othobon were not regarded as obligatory without some recognition in the councils, or that they had become ratified by use and custom." Several authorities are cited in support of his conclusion.

The history of the period extending from the time of St. Augustine, and particularly from the ascent of William the Conqueror to the throne of England, A.D. 1066, down to the Reformation in the reign of Henry VIII. during the sixteenth century, is a history of the gradual and continued efforts of the Popes to extend the power of the Roman Church, with its body of Canon Law, over the English Church, and the repeated and ofttimes successful efforts of the English Church against the unlawful encroachments upon its ancient rights and liberties as an independent branch of the Catholic Church. The English Church never

ceased to make most strenuous resistance to usurped power, and the Reformation was but the effectual carrying out of this well settled policy of the Church, and Henry VIII. only carried to completion what his predecessors had begun. He simply *exercised* the right to shake off the usurped power of Rome—a right which was his, because it is a right original and inalienable; a right which the State could not transfer, nor the Church itself suppress.

While there can be no question as to the ever continuing resistance of the English Church to the usurpations of Rome, still, even if she had tamely submitted thereto without protest, yet, because she had once been an independent Church, she still possessed the inalienable right, whenever she chose, to throw off that usurpation. For no lapse of centuries nor the assent of successive generations could barter away the rights and liberties of a once independent Church. Usurpation, however long continued, is usurpation still, according to the old maxim of the law, "*Adversus furem æterna auctoritas esto.*"

The several acts relating to the Church, passed in the reign of Henry VIII., did not create any new laws, "they only restored and vindicated the old, and recovered the ancient jurisdiction of the Crown and Church" It was, properly speaking, a period of Restoration —(See 4 *Blackstone's Com.'s, c.* 8; also, opinions of Coke and Fitzherbert.)

Let us now briefly review these acts of Henry VIII. which recovered to the Church its ancient jurisdiction. In the 25th year of Henry VIII. an act was passed for the punishment of heresy, the preamble of which sets forth "the great grievance which the generality of the

words in Popish decrees and acts produced," and states "that the most learned and expert man of the realm, diligently lying in wait upon himself, cannot eschew and avoid the penalty and dangers of the same." —(*Gibson's Codex*, *Vol.* I., *p.* 337.)

In the Act 25 Henry VIII., c. 19 (*See Hoffman's "Law of the Church," p.* 43), was recited a declaration of the clergy, that "many of the constitutions, ordinances and canons, provincial or synodical, were contrary to the laws and statutes of the realm, repugnant to the king's prerogatives, and onerous to the subject." In Burnett's "*History of the Reformation*" (*Vol.* IV., *pp.* 143–145) is a compilation of citations from the body of Canon Law, made by Archbishop Cranmer, to prove their inconsistency with the laws of the land.

The Act 25 Henry VIII., c. 19, authorized the king to appoint thirty-two persons out of the two Houses of Parliament, composed of an equal number of clergymen and laymen, "to view, search and examine the canons, constitutions, ordinances, provincial and synodal, theretofore made, not contrarient or repugnant to the laws and customs of the realm and the prerogative royal." The Act also provided that "such canons, constitutions and ordinances being already made not contrarient or repugnant as aforesaid, should be used and executed as they were afore the making of the Act till such time as they be otherwise ordered by such thirty-two persons."

The authority of the thirty-two commissioners, appointed by the Act 25 Henry VIII., c. 19, was successively renewed by Acts 27 Henry VIII., c. 15; 35 Henry VIII., c. 16, and by the Act 3 and 4 Edward VI., c. 11. Although the work was compiled, it

never became a law, owing to the death of Edward. But the principle announced in the statute creating the commission, that "such canons, constitutions and ordinances being already made not contrarient or repugnant as aforesaid, *should be used and executed as they were afore the making of the Act*," became the recognized law of the land.

The "canons, constitutions and ordinances" referred to in the statute (25 Henry VIII., c. 19), were chiefly those which composed the great body of English constitutions, etc., and not the laws prescribed by the Roman power. These are referred to in 25 Henry VIII., c. 21, wherein it is expressly declared that "The realm of England hath been and is free from subjection to any man's laws, but only such as have been devised, made and obtained within this realm for the wealth of the same, or to such other as, by sufferance of the king, the people of this realm have taken by their own consent to be used among them, and have bound themselves by long use and custom to the observance of the same, not as to the observance of any foreign prince, potentate, or prelate, but as to the accustomed and ancient laws of this realm, originally established as laws of the same by the said sufferance, consent, and custom, and none otherwise."—(*Hoffman's "Law of the Church," p.* 60.)

The authorities are well agreed that the great body of the English constitutions, etc., which had formed the law before the Reformation, continued to be the law after the Reformation, except those portions of it which were contrary and repugnant to the Common Law or Statutes of the realm, together with so much of the foreign Canon Law as was adopted by Parliament

or the courts of England, and also that it continued to be the law of England, until repealed or modified by subsequent legislation. Spelman, in his treatise "*De Sepultra*" (*p.* 179), says that the Canon Law as adopted here—the national and provincial councils—all these together, "as they have been heretofore in use, and are not repugnant to the laws and religion of the kingdom, or repealed by the statutes of Henry VIII., or of later times against papal usurpation, are still in force."

Dale, in his "*Clergyman's Legal Handbook*" (*5th Ed*, *p.* 4), says: "The canons are Ecclesiastical Laws, consisting of (*a*) legatine constitutions or ecclesiastical laws made in national synods, and (*b*) of provincial constitutions, or decrees of provincial synods. (See *Reeves' "Hist. Eng. Law,"* *Vol.* I, *p. 66;* and *Burn, E. L., Pref.*, *p.* 22.) By 25 Henry VIII., c. 19, and 1 Eliz., c. 1, it was enacted that the Canon Law should be reviewed (which was never done), and that until such review all canons then existing and not repugnant to the law of the land or the king's prerogative should still be used and executed. Such canons, therefore, are binding on laity and clergy."—(*Strange*, 1060.)

In *Caudry's case* (3 *Coke's Rep.*, xxix.), Lord Coke says: "So albeit the kings of England derived their Ecclesiastical Laws from others, yet so many as were proved, approved and allowed herein, and with a general consent, are aptly and rightly called the king's Ecclesiastical Laws of England."

In the case of the *commendams* in *Sir John Davies' Reports* (*p.* 198), it is stated: "A long time before the Canon Law was authorized and published (which was after the Norman Conquest, as was before shown), the ancient kings of England, viz., Edgar, Alfred, etc.,

have, with the advice of their clergy of the realm, made divers ordinances for the government of the Church of England; and, after the Conquest, divers provincial synods have been held, and several constitutions have been made, in both the realms of England and Ireland; all which are part of our Ecclesiastical Laws at this day."

A statement is made in the earlier part of the case that the Canon Law therein referred to was probably introduced into England under Stephen, about A.D. 1150.

Chief-Justice Tindale, in the *Queen* v. *Millis* (10 *Clarke and Finnelly*, 678), says: "I proceed in the last place to endeavor to show that the law by which the spiritual courts of this kingdom have, from the earliest time, been governed and regulated, is not the general Canon Law of Europe, imported as a body of law into this kingdom, and governing those courts *proprio vigore;* but instead thereof an Ecclesiastical Law, of which the general Canon Law is no doubt the basis, but which has been modified and altered from time to time by the Ecclesiastical constitutions of our Archbishops and Bishops, and by the legislature of the realm, and which has been known from early times by the distinguishing title of the King's Ecclesiastical Law." "That the Canon Law of Europe does not nor never did, as a body of laws, form part of the law of England has long been settled."—(*Ibid*, 680.)

Judge Hoffman justly remarks that this opinion states with great precision and accuracy the rule regarding the body of foreign Canon Law.

Lord Abinger in the same case (*p.* 745), speaking of the Ecclesiastical Law of England, says: "The

learned judges have, I think, satisfactorily derived it from the constitutions of the synods and councils in England, before the authority of the Pope was acknowledged in this country. I take that part only of the foreign law to be the Ecclesiastical Law of England, which has been adopted by Parliament or the courts of this country."

Sir Matthew Hale, in his "*History of Common Law*" (*p.* 32), speaking of "the papal or imperial laws," which obtained in England, says: "But their authority is founded merely on their being admitted and received by us, which alone gives them their authoritative essence and qualifies their obligation."

These authorities (not to mention numerous others to the same effect) are surely sufficient to prove the proposition, which some have disputed, that the foreign Canon Law was, in some particulars, in force in England after the Reformation. By its own power it had no force, but when incorporated into the Acts of Parliament, and also when adopted by the people of the land, and that adoption confirmed by the opinions of the courts, it was of force in England. It has also been used as the basis of many decisions in later times. —(See *Alston* v. *Attlay*, 7 *A. and E.*, 289; *Burder* v. *Mayor*, 6, *Notes of Cases, Eccl. and M.*, 1; and *Stavely* v. *Ullathorne*, 1 *Hardres*, 101; *Blunt's Book Ch Law*, *p.* 20.)

We now come to the consideration of the Ecclesiastical legislation of the post-Reformation period. For the purpose of this work, we need only consider so much of it as was put forth prior to the planting of the Church in the Colonies. While it is somewhat difficult to fix the precise date thereof, yet, as Judge Hoffman

says : " We cannot practically err if we place this period at the date of the royal charters to the Colonies respectively, if followed by a settlement, or the period of the first erection of a church and public worship in a colony."—(" *Law of the Church*," *pp.* 60, 61.) (See also *Beal* v. *Fox*, 4 *Georgia Rep.*, 404; *De Ruyter* v. *St. Peter's Church*, 3 *Barb. Ch. Rep.*, 119.)

The first ordained minister of the Church of England in the Colonies was the Rev. Robert Hunt. He embarked from England as a missionary for Virginia, on the 19th of December, 1606, and early in 1607 held the first services of the Church in the Colonies.

The first church was built by him at Jamestown some time in the same year.

Certainly no earlier date than the year 1607 can be taken as the date of the colonization of America and the establishing of the Church in the Colonies.

What, then, constituted the great body of the Ecclesiastical Law that was in force in England A.D. 1607 ?

Besides the great body of what was known as the " King's Ecclesiastical Law," or " Common Law Ecclesiastical," as Justice Whitlock calls it, were the canonical enactments of the post-Reformation period prior to the year 1607, which included the statutes of Henry VIII., Edward VI., and Elizabeth, the injunctions of Edward VI. and Elizabeth in 1547 and 1559, the Synod of Archbishop Parker, 1571, the *Articuli pro Cleri* of 1584, the *Capitula* of London, 1597, and the canons of 1603, in the reign of James I.

With, perhaps, the exception of the statutes of Henry VIII , the most important of these are the canons of 1603, as they superseded the two injunctions

of Edward and Elizabeth, and either superseded or modified the other institutions above mentioned. Judge Hoffman, after a most exhaustive investigation of the question as to what constituted the law of the Church of England at the time of the emigration of the Colonists to this country, gives as the result of his investigations the following:

First. That the body of the foreign Canon Law is presumptively without force or authority in England; and that in every particular case where it is sought to render one of its regulations available, the burthen of proving that such regulation had been adopted in England rests affirmatively upon the party adducing it.

That the legatine constitutions of Otho and Othobon stand upon the same footing.

Second. That the provincial constitutions have the presumption of legality and obligation attending them; and whenever applicable to a given case impose the task upon the adverse party of showing why they should not prevail.

Third. That in addition to these elements of law, the statutes of the realm, the decisions of the civil tribunals, the cases and precedents in the spiritual courts, made up the body of that system of regulations known as the Ecclesiastical Law of England.

The comments and writings of eminent men were also sources of information; and all these, except the statutes, formed the testimonials and witnesses of the Common Law of the Church, in the same manner as similar records and reports are the evidences of the Common Law of the realm.

Fourth. That the Canons of 1603, as well as the acts after the Reformation, also constituted a portion

of that law binding upon the clergy, but only binding upon the laity where admitted by long custom, or express recognition of the civil tribunals.

This, then, formed the great body of the English Ecclesiastical Law when the Church was planted in this country; and this constituted the body of the Law of the Church in the Colonies. Many modifications arose from specific provisions of charters, or particular laws of the Colonial assemblies, as well as from those changes in the situation of the people and the usages of the community, which rendered some provisions incompatible or inapplicable.—("*Law of the Church*," *pp.* 63, 64.)

Dr. Blunt, in his "*Book of Church Law*" (*7th Ed.*, revised by Sir Walter Phillemore, D.C.L., sums up the Church Law in force in England. His conclusions are in substantial agreement with Judge Hoffman's.

He says (*p.* 25): "To sum up, therefore, it may be said, in conclusion, the following are the several elements of Church Law as it is now in force in the Church of England:

"1. The Common Law of the realm.

"2. The English Canon Law, ancient and modern, so far as it is not opposed to the Common and Statute Law or to the royal prerogative.

"3. Foreign Canon Law, so far as it has been accepted by custom or by Act of Parliament.

"4. The Statute Law of the realm, including the Book of Common Prayer, with its Rubrics and the XXXIX. Articles of Religion."

I have already spoken of a "Common Law Ecclesiastical," and that even before the landing of St. Augus-

tine upon the shores of Britain, the British Church possessed a Common Law Ecclesiastical of her own.

The proposition that there is a Common Law Ecclesiastical, which holds the same relation to the Church as the Common Law does to the State, seems so self-evident a proposition as to require no proof. And yet its truth has been questioned by some. The proposition is not that there is a Common Law Ecclesiastical wholly separate and distinct from the Common Law of the State, but that there is a body of the Common Law which relates to the Church, and is for the regulation and the government of Ecclesiastical matters, and which is recognized as being the Common Law of the Church and is known in England as the Common Law Ecclesiastical. It is that portion of the Common Law which relates to the Church as another portion thereof relates to the State. Nor is it possible to separate the one entirely from the other; they are both but parts of the one great whole, known as the *Common Law*, which consists of Common Law relating to the State alone, of Common Law relating to the Church alone, and of Common Law relating to both State and Church.

I cannot but feel that they who question the truth of the proposition that there is a Common Law Ecclesiastical have not made a careful and thorough study of Ecclesiastical Law and history. I have failed to find any of the recognized authorities on Ecclesiastical Law denying or questioning the proposition. On the contrary, they either assert or assume it to be true.

Bishop Gibson says:

"*Common Law*, which (saith Sir J. Davis) is nothing else but the Common Law of the realm, and (so he

adds) a custom which hath obtained the force of law, is always said to be *jus non scriptum*. And as the spiritualty is an essential part of the English Constitution, and of a distinct nature and administration from the temporalty, so hath it its Common Customs, and *jura non scripta* as well as the temporalty. . . . And the like ancient rights, which are not derived from any written laws, but (so far as they are spiritual powers) have the same original with the order itself, and (considered as branches of the Constitution of the Church of England) subsist upon ancient custom and immemorial practice, and, as subsisting upon these, may be properly called the Common Law of the Church."—(*Codex*, "*Introductory Discourse*," xxvi.)

In the same "*Introductory Discourse*" he says: "The making of Common Law one branch in the division of the laws of the Church of England is an immediate consequence of the division of the whole body into spiritualty and temporalty, and is no more, in effect, than to say that immemorial practice, relating to temporal affairs, shall be in the temporal administration." And again: "The true notion of the Common Law extends to all those customs which have obtained the force of laws, although the method of proceeding be very different in them. And I see no reason why those laws, which stand upon one common bottom, as being received by immemorial custom, should not pass under the same denomination."

In another place he says: "The rules of Common and Canon Law are founded, not only upon the judgment and opinions of the professors of both Laws, but also upon the practice of our own Church and upon the body of the ancient Canon Law."—(*Codex*, *Preface*, xiv.)

Justice Whitlock states in *Evers* v. *Owen* (*God. Rep.*, 432): "There is a Common Law Ecclesiastical as well as our Common Law, *jus commune ecclesiasticum* as well as *jus commune laicum*."

Bishop Stillingfleet, in his work on "*Duties and Rights of Parochial Clergy*" (*Vol.* II., *Dis.* I.), speaks of the "ancient Common Law in this realm which still continues in force," and then says: "There is a Common Law Ecclesiastical which, although in many things it may be the same as the Canon Law which is read in the books, yet it hath not force from any papal or legatine constitutions, but from the acceptance and practice of it in our Church."

Burn, in his great work on "Ecclesiastical Law," says: "The Ecclesiastical Law of England is compounded of these four main ingredients—the Civil Law, the Canon Law, the Common Law, and the Statute Law." He also says: "Where these laws do interfere and cross each other, the order of preference is this: The Civil Law submitteth to the Canon Law; both of these to the Common Law; and all the three to the Statute Law."—(1 *Burn's* "*Eccl. Law*," xi. See, also, *Hale's* "*Hist. Com. Law*," 27, 32; "*Muscutt on Church Laws*," 19; *Queen* v. *Millis*, 10 *Clarke and Finnelly*, 678.)

CHAPTER II.

OF THE ENGLISH ECCLESIASTICAL LAW IN THE COLONIES AND IN THE STATES PRIOR TO 1789.

HAVING clearly established, in my judgment, the truth of the proposition that there is a Common Law Ecclesiastical, and that it is a part of, and included in, the whole great body of what is known as the "Common Law," we may next consider its application to the Colonial Church. But it will first be necessary to recall to our minds some of the propositions hereinbefore set forth and established. We have shown that laws and codes of laws are proper subjects of inheritance and can rightly be claimed by a Church or Nation as its birthright; that the Common Law of England, together with the Statute Law of the realm, was the birthright of the Colonists; that they claimed this birthright, and brought it with them to the shores of America, and that it formed the basis of the Colonial Law. We have also shown that the Common Law of the Colonists consisted of the Common Law of England, together with all the Statute Law thereof in amendment of the Common Law, and in force at the time of their emigration, so far as it was applicable to their situation; and that this Common Law included the Common Ecclesiastical Law of the Church of England.

But the Common Law of the Colonists included not only the Common Law Ecclesiastical of England, but also the Canonical Law of the Church; for, as we have

seen, the Common Law of the Colonists consisted not alone of the *lex non scripta*, but also of the *lex scripta*, the Statute Law, the positive enactments of the mother country, and the Canonical Law was a part of that *lex scripta*, the Statute Law, a part of the general laws of the mother country, and so a part of the Common Law which the Colonists brought with them to this country.

The Courts of this country have uniformly taken this view of the Canon Law of England whenever the question has been before them. In *Crump* v. *Morgan* (3 *Iredell's Eq. Rep.*, 91, 98), the Court gave as their opinion that "the Canon and Civil Laws, as administered in the Ecclesiastical Courts of England, are parts of the Common Law, . . . were brought here by our ancestors as parts of the Common Law, and have been adopted and used here in all cases to which they were applicable, and, whenever there has been a tribunal exercising a jurisdiction, to call for their use."

The question as to the force of the English Canon Law in this country, so far as it related to testamentary causes, was considered by the Supreme Court of North Carolina, and this opinion given: "Although the jurisdiction be changed, the rule of decision is not. The Canon Law is a part of the Common Law, so far as respects testamentary causes, and except such changes as may have been produced by statutes. We now determine here what is a good will of personal property, exactly upon the same principles that prevailed when the Governor took the probate of wills, or before the Ecclesiastical Judge in England."—(*Gaskins* v. *Gaskins*, 3 *Iredell's Law Rep.*, 158; see also *Batterson* v. *Thompson*, 8 *Phil. Rep.*, 251; *Bartlett et. al.* v. *Hip-*

kins, 76 *Md.*, 5; *Terrett et. al.* v. *Taylor et. al.*, 9 *Cranch*, 43; *De Ruyter* v. *Trustees et. al.*, 3 *Barb. Ch. Rep.*, 119; *Canal Appraisers* v. *People et. al.*, 17 *Wend.*, 571; *Bogardus* v. *Trinity Church*, 4 *Paige Ch. Rep.*, 178.)

We now come to the consideration of the relation of the Church of England to the Church in the Colonies, and also to the consideration of the first of the propositions advanced in the earlier part of the preceding chapter, viz.: *that the Ecclesiastical Law of England was the Law of the Church in the Colonies up to the time of their separation from the mother country in* 1775.

The proposition is not that the Church of England was established as a "State Church" in the Colonies (except where, as was the case in some of the Colonies, it was declared by the Colonial authority to be the established Church of that particular Province), nor that its worship was enjoined upon the Colonies; but the proposition is, as Judge Hoffman so clearly states, "that all members of the Church of England in the Colonies were subject to the Ecclesiastical Law of England, except where it was expressly altered or necessarily inapplicable."

While the truth of this proposition is so self-evident as to require no proof—probably will be denied by no one—yet, for a clearer understanding thereof with its true meanings and limitations, it will be well to notice various historical facts having reference to and illustrating the proposition. Judge Hoffman, in his "*Law of the Church*," and Dr. Hawks, in his "*Contributions to Ecclesiastical History*," cite a large number of these historical facts, and both are agreed as to the truth of the proposition advocated.

First, let us observe some of the Colonial legislation that had a more or less direct bearing upon the Church.

In 1619 the Colonial Assembly of Virginia passed an Act making the religious establishment of England to prevail in Virginia. In 1621–22, further provisions were made regarding it. In 1624, among other enactments relating to the Church adopted by the Virginia Assembly, was the following: "That there should be an uniformity in the Church, as near as might be, to the Canons of the Church of England, and that all persons should yield a ready obedience to them, upon pain of censure."—(*Hawks'* "*Con. to Ecc. Hist.*," *Vol* I., *p.* 35.)

In 1642 was passed an Act declaring, "that no minister should be permitted to officiate in this country but such as shall produce to the Governor a testimonial that he has received his ordination from some Bishop in England, and shall then subscribe to be conformable to the Orders and Constitutions of the Church of England, and the laws there established."—(*Ibid*, *Vol.* I., *p.* 53.)

In 1662 an Act was passed prohibiting any one from serving as a vestryman of the Church, "without taking the oaths of allegiance and supremacy, and subscribing a declaration of conformity to the doctrine and discipline of the Church of England." Attendance upon Divine worship was made compulsory by the same Act.—(*Hoffman's* "*Law of the Church*," *p* 21.)

The Colony of New York was governed from 1664 to 1683 by a code of laws known as the "Laws of the Duke of York." While it was decreed therein that "all the inhabitants were to bear their due proportion of charges for the support as well of Church as of the

State," it was not made necessary that a minister should be of the Church of England in order to be able to officiate or to be inducted into a parish.

In 1675 a Court of Assizes was held in New York, and an order made "that the laws of the government be duly observed as to parochial churches, and although divers persons may be of different judgments, yet all shall contribute to the minister established and allowed of."—(*Hoffman's "Law of the Church," p.* 18.)

In 1693, 1695 and 1705, Acts relating to the maintenance of ministers, etc., were passed by the Colonial Assembly of New York, which were repealed in 1784.

In South Carolina, Judge Hoffman tells us (*p.* 19), the charter to the Earl of Clarendon and others gave to them "the advowson of all churches, chapels and oratories, and to cause them to be dedicated according to the Ecclesiastical Law of England. It conferred also the power to dispense with conformity to the Liturgy and ceremonies of the Church and subscription to the Articles." The ninety-sixth of the fundamental articles drawn up by Mr. Locke declared "that the religion of the Church of England being the only true and orthodox and the national religion of all the king's domains, was also that of Carolina."

The ninety-seventh article was in the nature of a Toleration Act, and gave indulgence to Dissenters to form congregations and churches.

In 1696–97 an Act was passed granting liberty of conscience to all Protestants to enjoy full, free and undisturbed liberty to exercise their worship according to the professed rules of their religion.—(*Dalcho's "Hist. of S. C.," p.* 31.)

Judge Hoffman cites from *Dalcho's "History"* (*pp.* 32,

33) that "in 1698 an Act was passed for providing a public maintenance of £150 per annum for a minister in Charleston, payable out of the public treasury. This Act recited the provision of the Charter of Charles II., that no religious ministry, except that established by law in this kingdom of England, should have any public maintenance."—("*Law of the Church*," *p.* 20.)

In 1704 the Assembly passed an Act requiring of all members of the "Commons House of Assembly" conformity to the worship of the Church of England.

"In November, 1706, an Act was passed supporting the Establishment, which continued to be the law of the Church in that colony, with some additions and variations, to the time of the Revolution, and portions of which, it is understood, regulate the Church to this day."—("*Law of the Church*," *p.* 20; *Vestry et. al.* v. *Barksdale*, 1 *Strob. Eq. Rep.*, 197.)

In Maryland, the Colonial Assembly passed an Act in 1696 relating to the Church, but, failing to receive the royal assent, it did not become the law of the Colony. Another Act was drawn up in England and sent to Maryland, which became the law of the Colony in 1702. "By this law, every congregation and place of worship, according to the usage of the Church of England, for the maintenance of whose minister a certain revenue or income was directed by law to be raised, was to be deemed a part of the established Church."—(*Hawks*' "*Eccl. Con.*," *Vol.* II., *p.* 113.) "It may be fairly assumed that the Colonial Church was subject to and governed by this law (the English Ecclesiastical Law), so far as it was applicable and was consistent with the chartered rights of Lord Baltimore."—(*Bartlett et. al.* v. *Hipkins*, 76 *Md.*, 5.)

In studying the history of the Colonial legislation we must remember, as Judge Hoffman states (*pp.* 16, 17), that "What laws Churchmen brought with them, or submitted to for the regulation of their spiritual and incidental secular relations, is a wholly different question from that of the prevalence of a law regulating the worship of every Colonist."

It is plainly evident from the history of Colonial legislation, that Parliament made little or no provision for the support of the Church, and that what provision was made the Colonial Assemblies themselves made, and even when "Bishop Berkeley had won from a reluctant Parliament the munificent gift of £20,000 to found a college for America," we are told that "Sir Robert Walpole interposed and plundered the fund to swell the nuptial pomp of a princess."

It was not to King or Parliament, but to "The Society for the Propagation of the Gospel in Foreign Parts," that the Church in America owes a debt of deepest gratitude. That society was incorporated in 1701, and, in the language of its charter, was established "for the receiving and managing such funds as might be contributed for the religious instruction of his Majesty's subjects beyond the seas; for the maintenance of clergymen in the plantations, colonies and factories of Great Britain; and for the general propagation of the Gospel."

Judge Hoffman, in referring to that "beneficent body," well says: "The story of its abundant labors and countless blessings is a proper theme for the eloquent pen of the historian of the Church. Throughout its own works—throughout the late publications in England upon Colonial annals—are poured forth in

a copious stream the memorials of its holy efforts and their holy fruits; and when from the thousand altars of the Episcopal Church the utterance of praise and prayer arises in the stately, flowing language of Edward, let us remember that chiefly to that society we owe the inappreciable gift."—("*Law of the Church*," *p.* 25.)

The Colonial Churchmen made repeated efforts to obtain a Bishop for the Colonies, or at least some one invested with some of the authority of a Diocesan.

As early as 1687 the Churchmen of Maryland presented a memorial to the Bishop of London in which the Governor and the Assembly concurred, "to send some one invested with so much of the authority of the Diocesan as would capacitate to redress what was amiss, and supply what was wanting in the Church."—(*Hawks'* "*Con. to Ecc. Hist.*," *Vol.* II., *p.* 81.)

Commissaries were appointed by the Bishop for some of the Colonies at different times, but their request for a Bishop was not granted.

"The missionaries of the Church stood upon the shore and beckoned to the descendants of the Apostles to come across. They beckoned ineffectually, and the cause of Episcopacy trembled for many years in the struggle with dissent."

The most that they were able to attain was the appointment of the Bishop of London as their Diocesan, and the union of the Church in the Colonies with the see of London.

It seems impossible to ascertain by what authority this appointment was first made. We are told by Bishop Wilberforce, that on Bishop Gibson's attainment to the see of London, he was informed that the

appointment was made by an order of Council in the reign of Charles II., but being unable to find such an order, he refused to act as the Diocesan of the Colonies until a commission was granted him by the Crown. His request was evidently granted some time in the year 1723, as his first act was an address dated in November of that year.

Hawkins, in his "*Historical Notices*" (*pp.* 423, 424), says that in the instructions to the "Society for the Propagation of the Gospel, etc.," they were directed to wait upon the Bishop of London as their Diocesan, and this authority over them is recognized in the instructions to one of the Governors (Lord Cornbury, Governor of New York), as early as 1703.

The jurisdiction of the Bishop of London over the Colonial Church was generally recognized, and seldom ever questioned. One or two instances only, of the recognition of his Colonial jurisdiction need be noted.

In South Carolina, in 1704, the Assembly had passed an Act that was exceedingly distasteful to Churchmen and Dissenters alike. It provided, among other things, for a tribunal of twenty laymen, for the judging of Ecclesiastical cases. This was deemed, by Churchmen, as an invasion of the authority of the Bishop of London, under whose authority alone such courts could be held. A memorial was sent to the House of Lords, in which it was stated that they were under the jurisdiction of the Bishop of London. The House of Lords voted an address to the Queen, in which they stated that the provision of the law establishing the lay commission was "repugnant to the law of the realm, and destructive of the Constitution of the Church of England." The Queen declared the law

null and void, and in November, 1706, the Assembly repealed it.—(*Dalcho's "History," p.* 69.)

In 1714, the vestry of one of the parishes in the Colony of Maryland preferred charges against their clergy to the Governor. Finding that he had no jurisdiction over the matter, as it was an Ecclesiastical matter, he sent three clergymen to inquire into the facts, "partly to quiet the minds of the complainants, and partly to ascertain facts which might be laid before the Bishop."—(*Hawks'* "*Ecc. Con.*," *Vol.* II., *pp.* 140, 141.)

Judge Hoffman, in commenting on this incident, says: "In this precedent we have the theory of Ecclesiastical authority and the rule of the Canon Law of England observed so far as it was practicable. By that law the Churchwardens have the right, and are the proper persons, to lay a complaint before the Bishop of the diocese, by whom it is to be investigated and determined. (See *Phillimore's Ed. of Burn's "Ecc. Law," Vol.* I., *p.* 399.) The application to or through the Governor was a matter anomalous, but growing out of his legal position. The Governor disclaimed the power of judging a matter merely ecclesiastical, and put the parties in the way of having the facts laid before the Bishop."—("*Law of the Church*," *p.* 28.)

An attempt was made to secure the passage by the Maryland Assembly of a bill to bring the clergy under the jurisdiction of a lay "Court for the Trial of Clergymen." The Governor declined to give his assent to the bill, one of his reasons being that "the clergy were properly under the jurisdiction of the Bishop of London."—(*Hawks'* "*Ecc. Con.*," *Vol.* II., *pp.* 179, 180.) This attempt to destroy the Bishop's jurisdiction over the clergy of the Colony only resulted in strengthening it.

These historical facts which I have adduced are certainly sufficient to prove the identity of the Church in the Colonies with the Church of England, from the time of their first settlement up to the time of their separation from the mother country in 1776, and that she was governed by the same general Ecclesiastical Law, modified somewhat, indeed, by Colonial customs and usages. She was under the jurisdiction of a Bishop of the Church of England, and recognized and acknowledged that jurisdiction. Her services were conducted, and her Sacraments administered, in every place, in the words of the Prayer Book of the Church of England. She called herself, and all men recognized her, as the Church of England in the Colonies.

The words of Judge Hoffman regarding this proposition are so true, and so well chosen, that I quote them at length. He says: "I have gathered together a collection of facts and historical muniments, to show the identity of the Church of the Colonies with that of England—to show how thoroughly she was pervaded with the spirit of the law, as well as of the faith and doctrine of that Church. In following this inquiry, it can scarcely have escaped notice, how much that law was modified and influenced by our Colonial situation, usages, and jurisprudence. The truth is, that a Common Law had sprung up in the Colonies, the offspring of their necessities and position, in the same manner as the Common Law of England had arisen in the Saxon ages. The latter, with wonderful flexibility, had adapted itself to the mutations and the progress of successive centuries. That superadded American Common Law was developed in usages and statutes;

and its influence was felt in the system of the Church, as well as in the civil relations of the people."—("*Law of the Church*," *p.* 30.)

The next proposition that I will attempt to establish is, that *the English Ecclesiastical Law was substantially the Law of the Church during the Revolutionary War, and thereafter until the year* 1789, when the Church, complete in her three orders of the ministry, came into possession of all the constituent elements of an entire Church, and began her separate existence as that branch of the Catholic Church known in law as the "Protestant Episcopal Church in the United States of America."

The revolution of the Colonies was against the State, not against the Church.

The Declaration of Independence by the Colonies, on the Fourth of July, 1776, was a Declaration of Independence of the mother country, not of the mother Church. With her, the Church in the Colonies had no quarrel, and resorted to no revolution against her. "There followed no disruption of her Catholicity; no severance of spiritual ties; no overthrow of her applicable laws"; no change in the form, or in the manner of the administration of her Sacraments.

She still continued to use the old and loved Prayer Book of the Church of England. Her sons, the Commander-in-Chief, the officers and the soldiers of the American Army fought for independence from England, but not for independence from the Church of England; and, whenever it was possible, they attended the service of the Church of England, and worshipped God in the words of the Church of England Prayer Book.

Her identity with the Church of England continued unbroken through the Revolutionary period, and through the post-Revolutionary period up to the year 1789. Her priests and her laity still remained loyal to her; they still named her as the Church of England.

On the day after the Declaration of Independence, the Convention of Virginia altered the Book of Common Prayer to accommodate it to the change of condition in State affairs. Judge Hoffman tells us that this document is preserved in the New York State Library in Albany, and that "it contains various alterations of the service, almost exclusively relating to the prayers for rulers, and closes as follows: 'Let every other sentence of the Litany be retained, without any other alteration, except the above sentences recited.'"—("*Law of the Church*," *p.* 31.)

In 1785 (in Virginia), it was ordered "that until the farther order of the Convention, the Liturgy of the Church of England be used in the several Churches throughout this Commonwealth with such alterations as the American Revolution has rendered necessary."—(*Perry's* "*Journals of the Early Con.*," *Vol.* III., *p.* 49.)

In 1783 the first Convention of Maryland issued the celebrated Declaration of Fundamental Rights. It declared that the Church of Maryland possessed the right to "complete and preserve herself as an *entire* Church, agreeably to her ancient usages and possessions; and to have the full enjoyment and free exercise of those purely spiritual powers which are essential to the being of every Church, *independent* of any *foreign* or other Jurisdiction, so far as may be consistent with the civil rights of society." It was

also declared that the churches, chapels, glebes and other property formerly belonging to the Church of England belonged to that Church and were secured to it forever. The Declaration closed with the following passage: "As it is the right, so it will be the duty, of the said Church, when duly organized, constituted and represented in a Synod or Convention of the different Orders of her Ministers and People, to revise her Liturgy, Forms of Prayer and Public Worship, in order to adapt the same to the late Revolution, and other local circumstances of America; which, it is humbly conceived, may and will be done without any other and farther departure from the venerable Order and beautiful Forms of Worship of the Church from whence we sprung, than may be found expedient in the change of our situation from a DAUGHTER to a SISTER CHURCH."—(*Perry's "Jour. Con.," Vol.* III., *pp.* 23, 24.)

The Constitution of the Church in South Carolina, adopted May 31, 1786, provided that "the doctrines of the Gospel be maintained as now professed in the Church of England, and uniformity of worship be continued as near as may be to the Liturgy of the said Church."—(*Hoffman's "Law of the Church," p.* 33.)

In the fundamental articles adopted by Pennsylvania in May, 1784, it was declared that "the doctrines of the Gospel be maintained as now professed by the Church of England; and uniformity of worship be continued as near as may be to the Liturgy of the said Church."—(*Perry's "Jour. Con.," Vol.* III., *p.* 38.)

The thirty-fifth Article of the Constitution of the State of New York, adopted in 1777, after recognizing as the law of the State such parts of the Common Law

and of the Statute Law of England, and of the Acts of the Legislature of the Colony of New York, as together formed the law of such Colony, on the 19th of April, 1775, ordained: "That all such parts of the Common Law, and all such of the said Statutes and Acts aforesaid, or parts thereof as may be construed to establish or maintain any particular denomination of Christians or their ministers, or concern the allegiance heretofore yielded to, and the supremacy, sovereignty, government, or exercise by the King of Great Britain, and his predecessors, over the Colony of New York, and its inhabitants, or are repugnant to this Constitution, be, and they are, hereby abrogated and repealed." The thirty-sixth Article had this clause: "Nothing in the Constitution contained should be construed to affect any grants of lands within the State, made by the authority of the King, or his predecessors, or to annul any charters to bodies politic, by him or them, or any of them, made prior to the 14th of October, 1775."—(*Hoffman's* "*Ecc. Law*," *pp.* 40, 41.)

It will be observed that these Articles of the Constitution of the State of New York in no way affected the Ecclesiastical relation of the Church to the Church of England; their purpose was simply to repeal such portions of the then existing law as seemed to give preference to and establish any particular denomination of Christians, and to abrogate such laws as gave sovereignty over the Colony of New York to the King of Great Britain.

On the 6th of April, 1784, an Act was passed (*Laws* 1784, *chap.* xviii.) relating to religious societies, the ninth section of which was as follows: "Nothing in the Act contained was to be construed to alter or

change the religious constitutions or governments of either of the said churches, congregations, or societies, so far as respects or in anywise concerns the doctrine, discipline, or worship thereof."

A clause in the Act of April 17, 1784 (*chap.* xxiii.), is important as showing that in New York the Church was at that time known as the Church of England. The sixth section of the Act refers to certain Acts passed by the Colonial Legislature which "do grant certain emoluments and privileges to the Episcopal Church, or *that mode of religious worship commonly called the Church of England*, . . . and do also declare or imply a pre-eminence or distinction of the said Episcopal Church, or Church of England."—(*Hoffman's* "*Ecc. Law*," *p.* 42.)

At a Convention of the clergy of Connecticut, held at Wallingford May 28, 1776, the following address to the Bishop of London was adopted: "We, the clergy of the Church of England in Connecticut, in a voluntary convention, beg leave, with all humility, to recommend Mr. Abraham Beach to your lordship as a proper candidate for Holy Orders."

In June, 1776, we find record of their calling themselves "the clergy of the Church of England."

In May, 1781, a Convention was held, and the heading of the minutes reads: "At a meeting of the clergy of the Church of England in Connecticut."

Judge Hoffman states that he had examined various documents connected with the Church in Connecticut, and among them he found a letter from Dr. Jarvis, afterwards Bishop, dated May, 1786, which, he says, expresses the views of the clergy of Connecticut.

From this letter he quotes as follows: "In the

planting and growth of the Church in America, I have always understood that the Church of England was propagated and enlarged. Now, as our Church was in her original a part, and is in her formation the image of that—if we still adhere to the worship and doctrine—is it not proper (the question may be, whether it be not needful) to declare so authoritatively? I would then submit the following particulars:

"1. That it be recommended to the Bishop to call a convocation at which a resolution should be moved that we adopt the Liturgy of the Church of England entire, except the prayers for the State, and the offices appointed for State days, or, with some few abbreviations, such as will do no injury to the sense, order, or connection of the whole."—("*Law of the Church*," *p.* 55.)

The remainder of the quotation relates to the adding of a few prayers for special occasions; that certain rubrics, found necessary to deviate from, be altered, and that the Canons be revised, and such as are applicable, or can be made so, be selected.

Massachusetts, in September, 1784, adopted certain articles, one of which was as follows: "That the Doctrines of the Gospel be maintained as now professed by the Church of England, and Uniformity of Worship be continued as near as may be to the Liturgy of said Church."—(*Perry's* "*Jour. Con.*," *Vol.* III., *pp.* 63, 64.)

It is almost the identical language also used by the Convention of New Jersey, in 1786, in their Memorial to the General Convention.

These historical citations certainly show that it was not the desire nor the intention of the Church, during the period extending from the Declaration of Independence, in 1776, to the first complete General Con-

vention of the Church, in 1789, to depart from the Church of England in "any essential point of doctrine, discipline, or worship."

On the contrary, they show that it was their desire and intention to adhere thereto "as far as shall be consistent with the American Revolution and the Constitutions of the respective States."

This, as we have shown, was substantially the mind of the Church, in a majority of the States at least, and I have been unable to find any evidence that it was not the mind of the Church in every State from 1776 to 1789. The only evidence, so far as I have been able to find (and it is no evidence of any fact), that can give color to the existence of a different mind on the part of any portion of the Church is that given by Bishop White in his "*Memoirs of the Church*" (*1st Ed., p.* 64), where he relates that at a meeting of some of the clergy, held in New Brunswick, N. J., in May, 1784, "Some of the more Northern clergymen were under *apprehension* of there being a disposition on the part of the Southern members to make material deviations from the ecclesiastical system of England in the article of Church government."

During the Revolution and immediately thereafter, the Church in America believed herself to be still connected with the Church of England. She called herself, and was known, in some of the States at least, as "The Church of England." She believed that the only alterations in the Prayer Book which were justifiable were the prayers for the English State, and the English rulers, and that the only departures from that Ecclesiastical Law which they had recognized and submitted to for their guidance before the

Revolution, that could yet lawfully be made, were those cases where the higher rule held good—" Necessity knows no law."

It will be conceded, I think, as an undeniable proposition, that " laws which are once in force over an organization must remain in force so long as its identity continues, unless they expire by limitation or are repealed by the lawmaking power."

Let us apply this proposition to the proposition in hand, viz.: that the Ecclesiastical Law of England, which was in force in the Colonial Church prior to the Revolution, continued of force in the Church during the Revolution, and thereafter until the meeting of the General Convention of the Church in 1789. The Revolution and the Declaration of Independence made no change in the identity of the Church. She continued to be the same identical Church, during and after the Revolution, that she was before the Revolution. She professed the same doctrines; she used the same Liturgy; she administered the same Sacraments and in the same unfailing words; her clergy subscribed to the same Articles, only, she was no longer under the temporal sovereignty of England.

That the Church in America, after the 4th of July 1776, was, in every essential feature, the same identical Church that she was prior to that date, and that she so continued to be until 1789, cannot, and I think will not, be doubted by any one.

Many of the authorities, and the opinions of the Courts, hereinafter cited, prove most conclusively this fact of the Church's continued identity, in every essential feature, during the Revolutionary and post-Revolutionary periods.

No one can read the records of the various Conventions of the clergy held in the different States prior to the General Convention of 1789, and the historical documents connected therewith, without being impressed with the universal desire of the clergy of the Church and the great care by them taken to preserve in every essential feature the identity of the Church.

It is not necessary, at this point, to consider these documents at length, as citations from them will be made when we come to consider the action taken by the Churches in the different States, looking to a union thereof, prior to the General Convention of 1789. A few citations will be sufficient to evidence what was the mind and intent of the Church.

At a meeting of the clergy of Connecticut, held in New York City, April 21, 1783, an address to the Archbishop of York was adopted, praying for the consecration of the Rev. Dr. Samuel Seabury as Bishop of Connecticut. In this address we find the following: "Notwithstanding the dissolution of our *civil* connection with the parent State, we still hope to retain the *religious polity*, the primitive and evangelical doctrine and discipline, which, at the Reformation, were restored and established in the Church of England. To render that polity complete, and to provide for its perpetuity in this country by the establishment of an *American Episcopate*, has long been an object of anxious concern to us, and to many of our brethren in other parts of this continent." And in the "Testimonial" signed by them, to be forwarded with the address, they ask for the consecration of Dr. Seabury, that "he may return to Connecticut, and there exercise the spiritual powers and discharge the duties which are peculiar to the

Episcopal character among the members of the Church of England." They also state that "it will be the means of preserving the Church of England in America from ruin.—(*White's* "*Memoirs*," 1*st Ed.*, *pp.* 325 328)

After his consecration, August 15, 1785, Bishop Seabury wrote to the Rev. Dr. Smith, of Maryland, regarding the question of titles to property in that State, which the Church was seeking to retain, in which he says: "I can see no good ground of apprehension concerning the titles of estates, or emoluments belonging to the Church in your State; your Church is still the Church of England, subsisting under a different civil government."—(*White's* "*Memoirs*," 1*st Ed.*, *pp.* 339, 340)

In the "Memorial from the Convention in New Jersey" to the General Convention, dated May 19, 1786 (to which reference has already been made), a request is preferred, that the General Convention will "remove every cause that may have excited any jealousy or fear, that the Episcopal Church in the United States of America have any intention or desire essentially to depart, either in doctrine or discipline, from the Church of England; but, on the contrary, to convince the world that it is their wish and intention to maintain the doctrines of the Gospel as now held by the Church of England, and to adhere to the Liturgy of the said Church, as far as shall be consistent with the American Revolution, and the Constitution of the respective States."—(*White's* "*Memoirs*," 1*st Ed.*, *pp.* 359, 360.)

The opinion of Bishop White is important on this point. Referring to "the pretence made by some that the Episcopal Church in the United States began

with its obtaining of the Episcopacy," he says: "A new name does not characterize the Church as new, but may arise from civil changes in various ways to be conceived of. What was formerly 'the Church of England in America' did not cease to exist on the removal of the Episcopacy of the Bishop of London, by the providence of God; but assumed a new name, as the dictate of propriety."—("*Memoirs*," *1st Ed., p.* 97.)

We have already proven that the English Ecclesiastical Law *was of force* in the Colonial Church, so far as it was applicable to their circumstances, up to the time of the Revolution. No one, I presume, will claim that this Law could or did "expire by limitation"; and as there was no "law-making power" for the Church until 1789, it could not have been "repealed" by any "law-making power."

It is clear, then, that the English Ecclesiastical Law, which was in force in the Colonial Church, did *not* "expire by limitation," nor was it repealed by any "law-making power," and must, therefore, have "remained in force" in the Church during, and after, the Revolution, if the identity of the Church remained. But we have seen that the "identity" of the Church *did* remain; therefore, so much of the English Ecclesiastical Law as was in force in the Colonial Church before the Revolution, of very necessity also "remained in force" after the Revolution.

The truth of this proposition was most strongly asserted by Hugh Davey Evans, who, as it has well been said, was "one of the most distinguished lawyers of his day," and "one of the most profound Canonists that ornamented the history of the American Church." He says: "It is not easy to understand that a merely

political revolution could have changed the Ecclesiastical Law. So far as the supposed Ecclesiastical Law was connected with the relations of the Church to the British Crown, or State, it was of course abrogated by the American Revolution. But there is no reason why the ordinary Ecclesiastical Laws should have been changed by a political revolution, more than the laws which regulate civil rights or civil contracts.

"A revolution which puts an end to one government, and substitutes another, dissolves all political laws, and may dissolve all politico-ecclesiastical laws; but it leaves untouched the ordinary laws of civil society. This is more especially clear, when, as in the case before us, the new civil government refuses all connection with Ecclesiastical affairs. Neither could the mere dissolution, by mutual consent, of the relations between the Bishop of London and the American Churchmen, change the Law under which the latter lived. They must have remained under the authority of the purely Ecclesiastical Laws of the Church of England, of which they had been part, until they were changed by competent authority. But, although they had laws, they were without any efficient means of enforcing them."—(*Theophilus Americanus*, *pp.* 316, 317.)

To the same effect is the decision of the Supreme Court of the United States in *Terrett et. al.* v. *Taylor et. al.* (9 *Cranch*, 43). This was a case involving the question of title to certain glebe lands which had been given to the Church of England in the Colony of Virginia. Justice Story, in delivering the opinion of the Court, which held that the lands in question now be-

longed to the Episcopal Church, says: "The dissolution of the regal government no more destroyed the right to possess or enjoy the property, than it did the right of any other corporation or individual to his or its own property. The dissolution of the form of government did not involve in it a dissolution of civil rights, or an abolition of the Common Law, under which the inheritances of every man in the State were held. . . . The Revolution might justly take away the public patronage, the exclusive care of souls and the compulsive taxation for the support of the Church. Beyond these we are not prepared to admit the justice or the authority of the exercise of legislation." This opinion was quoted and approved by the same Court in *Society et. al.* v. *New Haven et. al.* (8 *Wheaton* [*U. S.*], 464).

In *Brown* v. *Langdon* (*Smith* [*N. H.*], *Rep.*, 178), it is stated that "change of name would not divest the property. (1 *Chr. Notes*, 650.) Though the name of the corporation be changed (as in the case of a new charter), yet it still retains its former rights and privileges."

CHAPTER III.

OF THE ENGLISH ECCLESIASTICAL LAW IN THE STATES SUBSEQUENT TO 1789.

WE NOW come to the period of the Church's transition from the "Church of England in the Colonies" to the "Protestant Episcopal Church in the United States of America," and we shall see, as Judge Hoffman well says, that "no violent disruption of the sacred bond took place. The daughter glided from the mother's side because in the allotment of Providence she had been led to maturity and independence; but the spiritual union, the union of faith, of worship, and of discipline was undestroyed; and God grant that it may prove indestructible."—("*Law of the Church*," *pp.* 30, 31.)

Before proceeding to the consideration of the third and final proposition, hereinbefore adduced, it may be well for us, in order to a more complete understanding of the action taken by the General Convention in 1789, to review briefly the separate action taken by the Churches in the different States, immediately prior to that Convention, looking toward the union of the separate Churches, and the formation of a National Church, and discover, if we can, the principle, if any, which underlaid and controlled their separate action.

When the peace of 1783 brought to an end the sovereignty of England over the Colonies "it found the Episcopal Church," as one has said, "pros-

trated and overwhelmed—the object of political jealousy and hatred—the object of bitter invective and persecution of sects, profiting by her downfall and exulting in her ruin. It found her drooping in sorrow and in fear amid the broken pillars of her temples and the disjointed stones of her altars."

But in this, her direst hour of need, the Church was not wanting in true and faithful sons, who brought to the great work of the rehabilitation and restoration of the Church "a zeal, energy and judgment worthy of the object and adequate to the task."

Bishop Perry tells us that "a single sheet of foolscap, faded and yellow with age, contains the records of the preliminary gathering of the clergy and laity out of which grew the independent organization of the American Church." ("*Handbook Gen. Con.*," 1785–1877, *p.* 1.) It was appended to the records of a meeting for another purpose, held in New Brunswick, N. J., May 11, 1784, at which were present clergy and laity from the States of New York, New Jersey and Pennsylvania. It states that it was agreed that a committee named be requested to wait upon the clergy of Connecticut, soon to be convened, "for the purpose of soliciting their concurrence with us in such measures as may be deemed conducive to the union and prosperity of the Episcopal Churches in the States of America. Also agreed by the gentlemen present, that the undermentioned persons be requested to correspond with each other, and with any other persons, for the purpose of forming a Continental Representation of the Episcopal Church, and for the better management of other concerns of the said Church."—(*Perry's* "*Handbook Gen. Con.*," *p.* 2.)

Several of the Conventions of the Church in the different States had previously adopted certain resolutions or fundamental principles in reference to a possible union of the Churches. These principles formed the basis and were in the main analogous to the principles agreed upon afterward in the Conventions formed of delegates representing the Church from the different States, and are worthy of notice on that account.

A meeting of the clergy of Connecticut was held in March, 1783. Its principal action was the recommending of Dr. Samuel Seabury to the Archbishop of York and the English Bishops for consecration as Bishop of Connecticut.

In Maryland a Convention of the clergy of the Church in that State was held on August 13, 1783, which set forth "A declaration of certain fundamental rights and liberties of the Protestant Episcopal Church of Maryland," consisting of four articles.

The first article is as follows: "We consider it as the undoubted right of the said Protestant Episcopal Church, in common with other Christian Churches under the American Revolution, to complete and preserve herself as an entire Church, agreeably to her ancient usages and professions, and to have a full enjoyment and free exercise of those purely spiritual powers which are essential to the being of every Church or congregation of the faithful; and which, being derived from Christ and His Apostles, are to be maintained independent of every foreign or other jurisdiction, so far as may be consistent with the civil rights of society"

The second article has reference to the maintaining of the three orders of the ministry, which "hath been

the received doctrine of the Church of which we are members."

The third article declares the right of the Church to enjoy the continuance of these three orders of the ministry, and that only ministers of Episcopal ordination ought to have the enjoyment of the property "formerly belonging to the Church of England in this State; and which, by the constitution and form of government, is secured to the said Church forever; by whatsoever name she, the said Church, or her superior order of ministers, may in future be denominated."

The fourth article declares the right of the Church, when duly organized, etc., "to revise her liturgy, forms of prayer, and public worship, in order to adapt the same to the late Revolution, and other local circumstances of America."—(*White's "Memoirs," 1st Ed., pp.* 86, 87.)

Another Convention was held in June, 1784, which approved the aforesaid declaration and set forth "certain fundamental principles of Ecclesiastical government." Among other things, they forbid any of the orders of the clergy having a view of settling in Maryland from taking or subscribing any civil or canonical obligation of obedience to any foreign power or authority. They also declare that "the duty and office of a Bishop differs in nothing from that of other priests, except in the power of ordination and confirmation; and in the right of precedency in Ecclesiastical meetings or Synods."

The composition of Ecclesiastical Conventions or Synods was also provided for, and was to consist of a representation of the laity as well as of the clergy.

Strange as some of these principles may seem to us,

we must remember that they were a concession to circumstances, that was at that time unavoidable in the State of Maryland. The Church had bitter opponents on every side, who were vigorously seeking her complete destruction and hoping to materially profit by her downfall. There was also a most bitter feeling against Bishops, which will account for the remarkable definition of the Episcopal order set forth by the Convention of 1784.

Dr. Hawks says: "The clergy very wisely acquiesced [in this definition of Bishops by the laity], and indeed, had they not done so, the Church, now left almost entirely dependent on the good will of the laity, would not have been organized at all."—("*Cont. to Eccl. His.*," *Vol.* II., *p.* 298.)

Bishop White tells us that this definition of the authority of a Bishop "gave great offence to some of the clergy."—("*Memoirs*," *1st Ed.*, *p.* 90.)

In Pennsylvania, a Convention of the Church, composed of clergy and lay members, was held in Philadelphia in May, 1784, and certain principles were set forth "as a foundation for the future forming of an Ecclesiastical body for the Church at large." They declared the independence of the Church; that it ought to have exclusive power to govern itself; adherence to the Liturgy of the Church of England; the three orders of the ministry; a representative body of clergy and laity the only power to make Canons; and only certain powers to be delegated to a General Ecclesiastical Government.—(*White's "Memoirs*," *1st Ed.*, *p.* 73.)

Bishop White tells us (*Idem*, *p.* 77), that it was deemed expedient to admit the laity to a representa-

tion in Conventions, "from its being a natural consequence of the principle of following the Church of England in all leading points of her doctrine, discipline, and worship. We could not, in any other way, have had a substitute for the parliamentary sanction to legislative acts of power."

In Massachusetts, a meeting of the clergy was held at Boston in September, 1784, which adopted certain resolves which were almost identical with those adopted in Philadelphia in the preceding May.

At the meeting held in New Brunswick, N. J., in May, 1784, it had been agreed by the clergy present to procure as general a meeting of representatives of the clergy and laity of the different States as might be possible, in the City of New York, on the 6th of October following. At this meeting in New York City, October 6, 1784, there were present clergy from Massachusetts, Connecticut, Maryland, and Virginia; and clergy and laity from New York, New Jersey, Pennsylvania and Delaware.—(*White's* "*Memoirs*," 1*st Ed.*, *pp.* 64, 65)

It was only a voluntary Convention, and could, therefore, only recommend to the clergy and congregations of the Church, in the States represented, and propose to those in States not represented, that they take steps "to unite in a general Ecclesiastical constitution on the following fundamental principles."

"I. That there shall be a General Convention of the Episcopal Church in the United States of America.

"II. That the Episcopal Church in each State send deputies to the Convention, consisting of clergy and laity.

"III. That associated congregations in two or more States may send deputies jointly.

"IV. That the said Church shall maintain the doctrines of the Gospel as now held by the Church of England; and shall adhere to the Liturgy of the said Church as far as shall be consistent with the American Revolution, and the constitutions of the respective States.

"V. That in every State where there shall be a Bishop duly consecrated and settled, he shall be considered as a member of the Convention *ex-officio*.

"VI. That the clergy and laity assembled in Convention shall deliberate in one body, but shall vote separately: and the concurrence of both shall be necessary to give validity to every measure.

"VII. That the first meeting of the Convention shall be at Philadelphia the Tuesday before the Feast of St. Michael next; to which it is hoped, and earnestly desired, that the Episcopal Churches in the respective States will send their clerical and lay deputies, duly instructed and authorized to proceed on the necessary business herein proposed for their deliberation."—(*White's "Memoirs," 1st Ed., pp.* 65, 66.)

In remarking on this call for the first Convention of the whole Church, Bishop White says: "It seemed a great matter gained, to lay what promised to be a foundation for the continuing of the Episcopal Church in the leading points of her doctrine, discipline and worship, yet with such an accommodation to local circumstances as might be expected to secure the concurrence of the great body of her members, and without any exterior opposition, to threaten the oversetting of the scheme."—(*Idem, p.* 67.)

On September 27, 1785, delegates from seven States, including South Carolina, not represented at the New

York Convention in 1784, met, pursuant to the call, at Philadelphia. The "fundamental principles" set forth by the former Convention, as noted above, with the exception of the fourth, were formally approved, and became a bond of union which held the several Churches together until the Convention of 1789. In the place of the fourth article relating to the Liturgy, a resolution was adopted for the appointment of a committee to report such alterations as they should deem necessary to "render it consistent with the American Revolution and the Constitutions of the respective States."—(*Perry's "Handbook Gen. Con.," p.* 8.)

The Convention "applied themselves to the making of such alterations in the Book of Common Prayer as were necessary for the accommodating of it to the late changes in the State, and the proposing, but not establishing, of such other alterations in that book and in the articles as they thought an improvement of the service and of the manner of stating the principal articles of faith. These were published in a book ever since known by the name of the Proposed Book."—(*White's "Memoirs," 1st. Ed., p.* 12.)

It is not necessary for the purpose of this work to consider at any length the changes made in the Proposed Book. The book was published; but it was immediately evident, as Bishop White says, "that in regard to the Liturgy the labors of the Convention had not reached their object." It was condemned at the outset, and failed completely to establish itself as the Prayer Book of the Church. "The question of its adoption was not even considered by the following General Conventions." — (*Perry's "Handbook Gen. Con.," p.* 42.)

Its only use seems to have been to form the basis of a Prayer Book for a schism from the Church nearly ninety years later.

In order that other Conventions might be held, an Ecclesiastical Constitution was proposed, and ordered transcribed, but no other action in the matter was taken at this Convention.

The outlines of this proposed Constitution were, in brief, as follows: There should be a triennial Convention; voting should be by States, each order having a negative upon the other; a Bishop to be *ex-officio* a member of the Convention; the clergy to be accountable only to the Ecclesiastical authority in the State where they belonged; requirement of a declaration of belief in the Holy Scriptures and a promise of conformity to the doctrines and worship of the Church. It also provided for the continued use of the Church of England Prayer Book, with the alterations already made, until such a time as the "*Proposed Book*" might be ratified by the Conventions of the States represented in the Convention.—(*White's "Memoirs," 1st Ed., p.* 14. *Perry's "Jour. Con.," Vol.* I., *p.* 22.)

Another important action of the Convention—the most fruitful one, as well as the most far-reaching in its consequences to the Church—was the passage of a resolution, the first section of which is as follows: "*Resolved:* 1. That this Convention address the Archbishops and Bishops of the Church of England, requesting them to confer the Episcopal character on such persons as shall be chosen and recommended to them for that purpose from the Conventions of this Church in the respective States." The second section "recommended to the said Conventions, that they

elect persons for this purpose."—(*Perry's "Jour. Con.," Vol.* I., *p.* 25.)

The address ordered was submitted to the Convention, signed by the members thereof, and forwarded to John Adams, the American Minister to England, with the request that he present it to the Archbishop of Canterbury. As this address will be considered hereafter, consideration of it, for the present, is unnecessary. After empowering a Committee to call another General Convention when they deemed necessary, the Convention of 1785 adjourned.

The second General Convention met in Philadelphia June 20, 1786. The Constitution proposed in the former Convention was taken up and several important amendments were made, in order to make it more conformable to the desires of the Archbishops and Bishops of the Church of England, as expressed by them in a letter written to the committee in reply to the address made to them by the Convention of 1785. The Convention also ordered a second address to the Archbishops and Bishops of the Church of England to assure them that they did "not intend to depart from the doctrine, worship, and discipline of the Church of England," further than was made necessary by local circumstances. This was signed by the members of the Convention, and forwarded to England.

The next General Convention, and the last prior to the Convention of 1789, met in Wilmington, Del., on the 10th of October, 1786.

The principal business was the consideration of the letters of the Archbishop and Bishops of the Church of England, and "of how far they should accommodate

to the requisitions of the English Prelates."—(*White's "Memoirs," 1st Ed., p.* 18.)

The Convention finally resolved to restore the Nicene Creed to its place after the Apostles' Creed in the Prayer Book; also the words, "He descended into hell," in the Apostles' Creed.

An address to the Archbishops of Canterbury and York was ordered and signed by the President in behalf of the Convention.

At this Convention the testimonials of the Rev. Dr. White, as Bishop-elect of Pennsylvania; the Rev. Dr. Provoost, as Bishop-elect of New York, and the Rev. Dr. Griffith, as Bishop-elect of Virginia, were signed by the members of the Convention. The Rev. Drs. White and Provoost sailed for England on the 2d of November, 1786, and on Sunday, the 4th of February, 1787, in the chapel of Lambeth Palace, they were consecrated Bishops by the Archbishop of Canterbury; the Archbishop of York presenting them, and the Bishop of Bath and Wells, and the Bishop of Peterborough, joining with the two Archbishops in the laying-on of hands.—(*White's "Memoirs," 1st Ed., p.* 158.)

On the following day, the Bishops of New York and Pennsylvania left London on their homeward journey, and arrived in New York on Easter Sunday, April 7th. The long continued "struggle for the Episcopate" in the English line was now happily ended, and the American Church was complete with its three orders of the ministry. New York and Pennsylvania each had her Bishop in the English line, and Connecticut her Bishop in the Scottish line, in the person of Bishop Seabury, who had been consecrated by the Non-juring Bishops of Scotland on the 14th of November, 1784.

This history of the action taken by the Churches in the different States, for a union thereof, and the forming of a national organization, is important; first, as indicating what was the mind of the Church in the different States, during this formative period, regarding the relation they bore to the Church of England, and what changes in doctrine, discipline, and worship each deemed necessary; second, in helping us to understand more clearly the final action taken, when, as an entire Church, with authority to act, she was assembled in a complete General Convention.

With this introduction we can proceed to consider the doings of the General Conventions of 1789 and 1792.

The Convention of 1789 met in Philadelphia, July 28th, and continued until August 8th. Bishop White, of Pennsylvania, clerical and lay deputies from the States of New York, New Jersey, Pennsylvania, Delaware, Maryland, South Carolina, and a lay delegate from Virginia, were present and composed the Convention.—(*Perry's "Journals of Con.," Vol.* I., *pp.* 65, 66.)

It must be borne in mind that this was not a *General Convention* in the true sense of the word, as it was composed of only one House, the House of Clerical and Lay Deputies, with Bishop White as President thereof, but provision was made at this Convention for a General Convention. The deputies were first called upon "to declare their powers relative to the object of the resolution" adopted by the June Convention of 1786, recommending the Conventions of the Church in the several States to give power to their deputies to the next General Convention, "to confirm and ratify

a General Constitution, respecting both the doctrine and discipline of the Protestant Episcopal Church in the United States."—(*Perry's "Jour. of Con.," Vo.*. I., *pp.* 42, 69.)

The deputies stated that they were fully authorized to ratify a Book of Common Prayer, etc., for the use of the Church. (*Idem, p.* 69) The Convention adopted a set of resolutions relating to the perpetuating of the succession of the Episcopal Order, and the requesting of the Churches in New England to meet with the Churches of the States then represented in Convention, and the three Bishops, in an adjourned Convention.

The principal business of the Convention, aside from that above noted, consisted in the adoption of a body of Canons, and the reviewing and remodelling of the Constitution formed in 1786. The principal feature now given to the Constitution was a division of the Convention into two Houses, one consisting of the Bishops, and the other of Clerical and Lay Deputies, who should vote by States and by orders, when so required. As the Constitution and the Canons were further amended at an adjourned Convention, further consideration of them at this point is not necessary.

The Convention adjourned to meet at the same place on the 29th of September following.

On the day appointed the Convention re-assembled. A clerical deputy from Virginia appeared and took his seat, thus completing the delegation from that State.

Bishop Seabury, of Connecticut, with some of the clergy of New England, were present to confer with the Convention, agreeable to the invitation sent them by the Convention at its first session.

The Convention then appointed a committee to confer with the clergy from New England on the subject of the proposed union.

The committee, after such conference held, reported to the Convention that the clergy from New England had authority to approve the Constitution, as set forth at the first session of the Convention, and that they were willing to assent to it, provided the third article thereof was "so modified as to declare explicitly the right of the Bishops, when sitting in a separate House, to originate and propose Acts for the concurrence of the other House of Convention and to negative such Acts proposed by the other House as they may disapprove."—(*Perry's "Jour. of Con.," Vol.* I., *p.* 95.)

The committee recommended that the said third article be amended, as desired by the New England clergy. The Convention then proceeded to so amend the article in question, with this exception, that instead of an absolute veto being given to the House of Bishops over the legislation of the other House, provision was made that such veto might be negatived by a four-fifths vote of the House of Clerical and Lay Deputies.

Bishop Seabury and the clerical deputies from New England reluctantly consented to this amendment, and signified in writing their assent to the Constitution of the Church as modified.

Bishop Seabury and the clerical deputies from the Church in Connecticut and the Church in Massachusetts and New Hampshire then took their seats in the Convention.

It may be well at this point to give a summary of the articles of the Constitution as set forth by the Conven-

tion on the 8th of August, and amended the 2d of October, 1789.

The first article provided for a General Convention of the Church triennially.

The second article provided for the representation therein of the Church in each State, clergy and laity to be represented by one or more, not exceeding four, of each order, the concurrence of each order, voting by States, and by orders when required, being necessary to constitute a vote of the Convention; provision was also made that a State, though unrepresented at any Convention, should be bound by the action of that Convention.

The third article provided for a separate House of Bishops whenever there shall be three or more Bishops, and gave a right to that House to originate and propose measures for the concurrence of the lower House, and a negative upon the action of the House of Clerical and Lay Deputies, unless adhered to by four-fifths of that House; the House of Bishops to signify to the Convention their approbation or disapproval of any measure, in writing, within three days after reception thereof, failing which, such measure should have the operation of a law.

The fourth article provided for the choice of a Bishop in every State by the Convention of that State, and that the jurisdiction of a Bishop be confined to his own State, unless requested to perform some Episcopal act by the Church in another State.

The fifth article provided for the future admission of the Church in any State not then represented.

The sixth article provided that the Convention of every State should institute the mode of trying clergy-

men therein, and that one of the Episcopal Order should be present at every trial of a Bishop, and that none but a Bishop should pronounce sentence of deposition or degradation from the ministry on any clergyman.

The seventh article provided for the examination of candidates for Holy Orders, and the declaration of belief and of conformity to the Church before admission thereto. It also provided that no one ordained by any foreign Bishop should be allowed to officiate as a minister of the Church before subscribing to the aforesaid declaration, and complying with the Canons for such case made and provided.

The eighth article provided that every Church in the States which should have adopted the Constitution, "shall use a Book of Common Prayer and the Offices, when the same shall be set forth by this or any future General Convention."

The ninth article provided that the Constitution was to be unalterable, "unless in General Convention by a majority of the States which may have adopted the same." It also provided how these alterations should be proposed, made known, and finally ratified.—(*Perry's "Jour. of Con.," Vol.* I., *pp.* 99, 100.)

The third article of the Constitution provided for the division of the Convention into two Houses as soon as three Bishops should belong to that body. This number was completed by the assent of Bishop Seabury to the Constitution, and his becoming a member of the Convention.

On October 3, 1789, Bishops White and Seabury withdrew from the House of Clerical and Lay Deputies and formed a House of Bishops, and the first complete General Convention began its labors.

The two Houses entered upon a review of the Liturgy of the Church and of the Canons passed at the previous session.

Only a brief review of the Canons finally adopted is necessary for our present purpose.

Canon I. declared that there should always be the three Orders of the Ministry in the Church.

Canon II. described the form of certificate to be produced on the part of the Bishop-elect, and of the testimony from the General Convention.

Canon III. relates to Episcopal visitations.

Canons IV. to VIII. inclusive relate to the age of those to be ordained or consecrated, titles of those in Orders, testimonials and learning of those who are to be ordained, and the stated times of ordination.

Canon IX., to those ordained by foreign Bishops.

Canon X., to the use of the Book of Common Prayer.

Canon XI., to the duty of ministers in regard to Episcopal visitation.

Canon XII. directs the censuring of notorious crimes and scandals.

Canon XIII. requires sober conversation in ministers.

Canon XIV. relates to the due celebration of Sundays.

Canon XV. directs ministers to keep a register.

Canon XVI. provides that a list of the ministers of the Church shall be made and published.

Canon XVII. requires that notice shall be given to the Bishop or Standing Committee of the induction and dismission of ministers.

Our more important concern is with the revision of the Book of Common Prayer as made by this Convention and the following Convention of 1792.

"The Convention appointed five committees to provide a Prayer Book for the Church : one on the Calendar and Tables of Lessons, with the Collects, Epistles and Gospels; another, on the Morning and Evening Service; a third, on the Litany, and occasional prayers and thanksgivings ; a fourth, on the order for the administration of the Holy Communion; and a fifth, to report in what manner the Psalms should be used."—(*Perry's "Handbook General Con.," p.* 72.)

No effort was made at this Convention for the adoption of the "Proposed Book." The House of Clerical and Lay Deputies proceeded, so far as the resolutions above noted would indicate, to compile a Prayer Book *de novo*, implying thereby that no Prayer Book of authority existed. But, as Bishop Perry well says in his "*Handbook of the General Convention*" (*p.* 72): "The latitude of change this course seemed to indicate was lessened by the general disposition of the members of the Convention to vary the Book as little as possible from the English model." This implied opinion of the House of Clerical and Lay Deputies, that the English Prayer Book had no authority, has been used by some as the basis of an argument against the identity of the American Church with the Church of England, and also as evidencing what was the mind of the Church in 1789, regarding the force of the Ecclesiastical Law of the Church of England upon the American Church. As this question will be noted hereafter, consideration of it at any length, at the present moment, is not necessary. But before proceeding with the question in hand, I desire to call attention to a statement that has been repeatedly made, that the General Convention (as one statement is), or the

House of Clerical and Lay Deputies, in 1789, resolved, "that the Protestant Episcopal Church possesses no institutions until made for her specially, and that we are no further bound by either the Catholic or the English Canons when confessedly applicable, than as we distinctly and by legislation recognize them." I can find no record of either the presentation or the adoption of any such resolution by either House in 1789, nor any reference to such a resolution in Perry's reprint of the "*Journals of General Conventions, etc.*," Perry's "*Handbook of the General Conventions*, 1785–1877," or in the 1st or 2d Editions of Bishop White's "*Memoirs*." In Vinton's "*Manual on Common Law*," the statement quoted is made, and "*Hoffman's Law of the Church*" (*p.* 37, *note*) is given as authority; but reference thereto shows that Judge Hoffman makes no such statement. Dr. Vinton also gives Bishop White's "*Memoirs of the Church*" (*p.* 175, *et. seq*) as another authority, but Bishop White nowhere in his "*Memoirs*," so far as I have been able to find, makes any such statement, nor can any implication be drawn from his words that such a resolution was even offered. There appears to be no more authority for the statement that such a resolution was adopted by either House of the Convention of 1789, than for any "cunningly devised fable." The deliberations of the two Houses on the provision of a Book of Common Prayer, we are told, were conducted with "the utmost harmony."

The desire of the House of Bishops, that no material alterations from the Prayer Book of the Church of England should be made, prevailed. The alterations made, other than those of a political nature, were

mainly verbal, together with the omission of repetitions." A few additions were made, viz., certain selections of Psalms, but the use of which was optional; a Service of Thanksgiving, an Order for Family Prayer, and an Office for the Visitation of Prisoners taken from the Irish Prayer Book.

Besides these, the Order for the Administration of the Holy Communion was changed to conform more nearly to the First Prayer Book of Edward VI., by the restoration of the Oblation and Invocation to the Consecration Prayer, of which they were formerly a part. The several alterations and additions were finally completed on October 16th, and the Book of Common Prayer was set forth and ordered to be in use from the 1st of October, 1790.

A joint committee of both Houses was appointed to superintend the publication of the Book of Common Prayer as set forth by the Convention.

One other matter connected with the Prayer Book should be carefully noticed, viz., the action taken regarding the Preface to the Book of Common Prayer, which has a most important bearing upon the question as to what was the mind of the General Convention of 1789, regarding any material departure from the *discipline*, as well as the doctrine and worship of the Church of England.

The argument has been made, that the Preface to the Prayer Book is "not in the form of a legal enactment," and "without evidence of its ever having been submitted to and formally adopted by the General Convention," and is characterized as "perhaps only the work of a committee."

Let us see how far this is true, the Journals of the

Conventions of 1789 and 1792 being our authorities in the matter. On page 121, *Vol.* I., of *Perry's Reprint of the "Journals of the Early Conventions"* (*Journal of the House of Bishops*) is this record: "Thursday, October 15, 1789. . . . This House originated, and proposed to the House of Clerical and Lay Deputies, . . . a table of contents, a form or manner of printing the former Preface. . . . These were sent by the Secretary to the House of Clerical and Lay Deputies."

On page 110 of the same "*Journals, etc.*" (*Journal of the House of Clerical and Lay Deputies*), it is recorded as follows: "Friday, October 16, 1789. . . . A Preface and Table of Contents were sent to this House by the House of Bishops, which, with their concurrence, were referred to the committee to be appointed to superintend the publication of the Book about to be issued by the Convention."

On page 112 (same date), is this record:—"*Resolved:* That the Rev. Dr. William Smith, etc., be a committee to superintend the printing of the Book of Common Prayer, as set forth by this Convention, and that they advise with any person or persons who shall be appointed by the House of Bishops for the same purpose."

On page 122 (*Journal, House of Bishops*), same date, is this record:—"This House received from the House of Clerical and Lay Deputies a message informing that they had appointed a committee, to join with any person to be appointed by this House, in setting forth the Book of Common Prayer. In consequence of which the Right Rev. Bishop White agrees to assist the committee in preparing the book for publication." This

action was taken by each House on the last day of the session of 1789.

In the General Convention of 1792, certain amendments were made to some of the Offices, and a joint committee appointed to compare the Book of Common Prayer with the original Acts, etc. On page 166 ("*Journal House of Bishops*") it is recorded:

"The House originated alterations in the Office for Ordaining Deacons; and alterations of the Preface, . . . and sent them to the House of Clerical and Lay Deputies, requesting their concurrence." Following this, on the same page, is this record: "The House received from the House of Clerical and Lay Deputies amendments to the additions in the Office for Ordaining Deacons, and in the Preface; in which the House *concurred*." In the Convention of 1789 the Preface was referred to a committee, but in the Convention of 1792, after the said committee had reported their action in the matter, the Preface was amended and *acted upon by the Convention.* The records of the Convention of 1792 show that the Preface of our Prayer Book is *not* the mere "work of a committee," and that there *is* evidence, conclusive evidence, that it *was formally adopted* by the General Convention, and is therefore an authoritative statement of what was the mind and purpose of the Church regarding the matters therein set forth.

We have seen that the Convention of 1789 received its authority from the Churches in the different States; that its aim was to form a union of these different Churches, and complete a national organization of the American Church, and that its principal enactments were the establishing of a Constitution and Code of

Canons, and the revision of the Prayer Book of the Church of England, in order to adapt it to the use of the Church in the United States of America. We have seen, as one has said, how "the fabric of the government of the Protestant Episcopal Church was founded upon the Apostolic Rock, and built up of the living stones of the English Church."

I have deemed it necessary to review, thus, at some length, the history and proceedings of the Church during its formative period as a National Church, believing that only by so doing can we consider understandingly the question of the continuing identity of our Church with the Church of England, and the truth of the third proposition, which I would endeavor to establish, viz.: That the English Ecclesiastical Law continued to be the Law of the American Church after 1789, and remains a part of the Law of the Church to-day, so far as it is applicable, and not superseded by enactments of our own.

Some, who deny the truth of this proposition, assert that the Protestant Episcopal Church is a new creation, and that before the Convention of 1789 it was "without form and void," bound by no Canons, subject to no Law, and possessed of no Prayer Book; that the Convention of 1789 *formed* the Church, and provided for it a Constitution, a Code of Canons, and a Liturgy; that "the whole organization, being new, had no fetters to bind it, and therefore was then, and is now, absolutely free from all the shackles of the English Law." This idea of the Church held by some members of the Convention of 1789, was most strongly denounced by Bishop White, who says, speaking of those who implied that there were no forms of prayer, no offices,

and no rubrics, until they should be formed by the Convention, "they did not carry their right so far; but they reasoned and expostulated on the point, with several of the gentlemen, to no purpose. They would not allow that there was any book of authority in existence; a mode of proceeding in which they have acted differently from the Conventions before and after them; who have recognized the contrary principle when any matter occurred to which it was applicable."—("*Memoirs*," 1*st Ed.*, *pp.* 177, 178.)

And again: "The congregations were always understood to be possessed of a Liturgy, before the consecration of her Bishops, or the existence of her Conventions. It would have been thought a strange doctrine in any of the clergy, had they pretended that they were released from all obligation to the use of the Book of Common Prayer, by the Revolution."—(*Idem*, *p.* 176.)

Citations could be produced, almost *ad infinitum*, in proof that after the Revolution the Church in every State believed herself to be still possessed of the Liturgy of the Church of England; that its use was still obligatory upon the Church, and must so continue until changed or superseded by competent and lawful authority, and that it was the wish and intention of the Church in every State to adhere to the Liturgy of the Church of England as far as might be consistent with the American Revolution and the Constitutions of the various States. But further citations on this point are unnecessary. The voice of the Church, as expressed in the separate State Conventions, is, as we have seen, unanimous on that point, and therefore conclusive as to the mind and intent of the Church. The

Liturgy of the Church of England was her Liturgy, and was to continue to be her Liturgy, with only such alterations as might be necessary to make it conform to the law of the land, and to her change of condition, from a dependent to an independent Church. We have seen that this "mind and intent" of the Church governed the action of the General Conventions of 1789 and 1792, and led them to set forth, not a new Liturgy, but the old Liturgy of the Church of England, with minor and necessary alterations, but identical in every essential, as the Liturgy of the Church in America, and in that Liturgy authoritatively declared to the world, "that this Church is far from intending to depart from the Church of England in any essential point of doctrine, discipline, or worship, or further than local circumstances require."

In this review of the history of the Church during its formative period as a National Church, it must have been plainly apparent—as Bishop White well says at the close of his "*Narrative of Events*"—"that the object kept in view, in all the consultations held, and the determinations formed, was the perpetuating of the Episcopal Church on the ground of the general principles which she had inherited from the Church of England, and of not departing from them, except so far as either local circumstances required or some very important cause rendered proper. To those acquainted with the system of the Church of England, it must be evident that the object here stated was accomplished on the ratification of the Articles."—("*Memoirs*," 1*st Ed.*, *p.* 29.)

The "Thirty-nine Articles of Religion," as they stand in the Prayer Book of the Church of England,

were adopted by the Convention of 1801, "without their altering of even the obsolete diction in them, but with notices of such changes as change of situation had rendered necessary. Exclusively of such there is one exception—that of adopting the Article concerning the Creeds to the former exclusion of the Athanasian."—(*White's "Memoirs," 1st Ed., p.* 28.)

The adduction of historical facts, and the citations from the opinions of those who were most active and influential in forming and completing the national organization of our Church, which I have herein set forth, proves, most conclusively, that the Fathers of the American Church, in all their proceedings, had ever in mind the preservation of her identity with the Church of England. That they succeeded therein, and that the Church in America, after her organization as a National Church in 1789, still preserved her identity in all essential features with the Church of England, and that she still preserves that identity, cannot, in my judgment, be reasonably doubted.

It is manifested in the authoritative use of a Liturgy, that is, in every essential feature identical with the Liturgy of the Church of England; in the adoption of the Articles of Religion, as set forth by the Church of England, with only slight variations; in an adherence to the same Faith, complete and undefiled; in the use of the same Sacraments; in the Episcopal Order, transmitted and received from the Church of England; and, as I shall endeavor to prove, in the acceptance and recognition of the binding force and obligation of the discipline of the Church of England—the Ecclesiastical Law of that Church—so far as it is applicable, and not superseded by civil or canonical enactments.

This question of identity arose in the General Convention of 1814, and was so clearly and unqualifiedly answered in the affirmative that it ought to settle the question forever. The question regarding the identity of the Church arose from a statement made, "that in some cause or causes pending in the courts, this identity had been denied."—(*White's* "*Memoirs*," *1st Ed.*, *p.* 297.)

He further says (*Idem*, *p.* 297): "It being foreseen that this pretence [the non-identity of the Church] will be set up whenever the appeal shall come on in Washington, there was supposed to be a call for the declaratory instrument." It is as follows: "The following declaration was proposed and agreed to: It having been creditably stated to the House of Bishops that, on questions in reference to property devised before the Revolution to congregations belonging to 'the Church of England,' and to uses connected with that name, some doubts have been entertained in regard to the identity of the body to which the two names have been applied, the House think it expedient to make the declaration, and to request the concurrence of the House of Clerical and Lay Deputies therein, that 'the Protestant Episcopal Church in the United States of America' is the same body heretofore known in these States by the name of 'the Church of England'; the change of name, although not of religious principle in doctrine, or in worship, or in discipline, being induced by a characteristic of the Church of England, supposing the independence of the Christian Churches, under the different sovereignties, to which, respectively, their allegiance in civil concerns belongs. But that when the severance alluded to took place, and ever

since, this Church conceives of herself as professing and acting on the principles of the Church of England, is evident from the organization of our Conventions, and from their subsequent proceedings, as recorded on the Journals; to which, accordingly, this Convention refer for satisfaction in the premises. But it would be contrary to fact, were any one to infer that the discipline exercised in this Church, or that any proceedings therein are at all dependent on the will of the civil or of the ecclesiastical authority of any foreign country. The above declaration having been communicated to the House of Clerical and Lay Deputies, they returned for answer that they concurred therein."—(*Perry's "Reprint Jour. Con.," Vol.* I., *pp.* 431, 432.)

On page 409 ("*Journal of the Cause of Clerical and Lay Deputies*," 1814), it is recorded that the "declaration was concurred in and returned to the House of Bishops."

No stronger proof could be desired, upon the question of identity, than this declaration of the General Convention of 1814, a distinct affirmance, by the body with the changed name, of its own identity. But if this be not sufficient, the contingency for which, as Bishop White says, the Convention provided, did arise, and the appeal of the case referred to came before the Supreme Court at Washington the following year, and the Court unanimously confirmed, in effect, the declaration of the General Convention, that "The Protestant Episcopal Church in the United States of America" is the same body formerly known in the States as "The Church of England," and that property devised before the Revolution to congregations belonging to the Church of England is now the property of

the Protestant Episcopal Church. The Court also declared that certain Acts of the Legislature of Virginia, so far as they went to divest the Episcopal Church of property acquired by donation previous to the Revolution, were unconstitutional and inoperative. —(*Territt et. al.* v. *Taylor et. al.*, 9 *Cranch*, 43; see also *Mason et. al.* v. *Muncaster et. al.*, 9 *Wheaton*, 445.)

Further comment or citation of authorities on this point is unnecessary.

Having proved that the American Church still retains her identity with the Church of England, let us now turn to the direct consideration of the main proposition, I would seek to prove, viz., that the English Ecclesiastical Law continued to be a part of the law of the American Church after its organization, and is a part of that law to-day, so far as it is applicable, and not superseded by enactments of our own.

First. What was the intent of the Church as to the continuing force and obligation of the English Ecclesiastical Law? The historical facts and opinions before adduced clearly show that up to the time of the holding of the General Convention in 1789, the intent of the Churches in the different States was to retain that Law, and to acknowledge its continuing force and obligation. Did the General Conventions of 1789 and 1792, and the subsequent Conventions, affirm and continue that intent?

I hold that they did, and that they so explicitly declared. I also hold that they were under what Bishop White called an "*antecedent obligation*," not to depart from the discipline of the Church of England.

In the Preface of the Prayer Book, which, as I have

snown, was proposed in the General Convention of 1789 and formally adopted by the General Convention of 1792, it is solemnly declared that "This Church is far from intending to depart from the Church of England in any essential point of doctrine, *discipline* or worship, or further than local circumstances require." And in the same Preface it is declared, in order to make still clearer the mind and intent of the Church, that "in every Church, what cannot be clearly determined to belong to doctrine *must be referred to discipline.*"

I need not stop to argue that by the "*discipline*" of the Church is meant the law of the Church, that "discipline" embraces law, and that the "discipline" of the Church comprises the whole body of Ecclesiastical Law by which the Church is governed.

Judge Hoffman, in his "*Law of the Church*" (*p.* 39 *et seq.*), discusses this question, and proves conclusively that "*discipline*" embraces law.

The Courts have always interpreted the "*discipline*" of the Church as meaning the law of the Church, and they use the words interchangeably.—(*Sohier* v. *Trinity Church*, 109 *Mass.*, 1; *Watson* v. *Jones*, 13 *Wall.*, 679; *Chase* v. *Cheney*, 58 *Ill.*, 509; *Pounder* v. *Ashe*, 44 *Neb.*, 672; *Christ Church* v. *Phillips*, 5 *Del. Ch. R.p.*, 429; *Ger. Ref. Ch.* v. *Seibert*, 3 *Barr*, 282; *Gaff et. al.* v. *Greer et. al.*, 88 *Ind.*, 122; *White Lick Quaker Case*, 89 *Ind.*, 136; *Stack* v. *O'Hara*, 98 *Penn. St. Rep.*, 213.)

It was to prevent any question arising about her *intent* as to the continuing force and obligation of the English Ecclesiastical Law, that the Church, at the beginning of her existence as a National Church, made this official declaration and placed it on her very

forefront, that she was "far from intending to depart from the Church of England in any essential point of" Ecclesiastical Law, "further than local circumstances require."

Previous to the General Convention of 1792, the House of Bishops had expressed an opinion regarding a question as to the exact form in which the Apostles' Creed should be printed in the Prayer Book, viz., that it was "a duty to maintain the principle that the Creed, as in the English Book, must be considered as the Creed of the Church until altered by the consent of both Houses, which was not yet done." —(*White's "Memoirs," 1st Ed., p.* 183.) The General Convention of 1792 affirmed the position taken by the House of Bishops, that the Prayer Book of the Church of England is binding, except in so far as "altered by the consent of both Houses" of Convention.

The General Convention of 1808 still more explicitly declared the *intent* of the Church as to the continuing force and obligation of the English Ecclesiastical Law upon the American Church. On the third day of the session, May 19, 1808, the deputies from the Church in Maryland communicated to the House that they had been instructed by the Convention of the Church in that State "to call the attention of the General Convention to the expediency of adopting the English Canon concerning marriages, and inserting the same in future editions of the Prayer Book." The Canon referred to is Canon 99 of the Code of Canons of 1603. Acting on this request, the House adopted a resolution referring the communication to the House of Bishops, with a request that they should consider it and "make any communication to this House which they may

deem proper." The resolution, with the communication referred to, was then sent to the House of Bishops. —(*Perry's "Jour. Con.," Vol.* I., *pp.* 341, 342.)

On May 21st, the House of Bishops sent to the Lower House a message, in part as follows: "The House of Bishops having taken into consideration the message sent to them by the House of Clerical and Lay Deputies, relative to the subject of marriage, as connected with the table of degrees within which, according to the Canons of the Church of England, marriage cannot be celebrated, observe as follows:

"Agreeably to the sentiment entertained by them in relation to the whole Ecclesiastical system, they consider that table as now obligatory on this Church, and as what will remain so; unless there should hereafter appear cause to alter it, without departing from the Word of God, or endangering the peace and good order of this Church."—(*Perry's "Jour. Con.," Vol.* I., *p.* 355.)

It is a plain, explicit, unequivocal statement of the House of Bishops (and, it may be reasonably inferred, of the House of Clerical and Lay Deputies also, as the Journal of the Convention records no dissenting voice when the message was read therein), of their opinion as to the "continuing force and obligation of the English Ecclesiastical Law upon the American Church." It is a positive declaration that "*the whole Ecclesiastical system*" of the Church of England (including of course the Common Law Ecclesiastical, as well as the Canons of 1603), so far as applicable to our local circumstances and not superseded by enactments of our own, is still "*obligatory on this Church*," and is to remain so, until it is altered by competent and lawful authority.

It was also declared by the General Convention of 1814, as before shown, that the "change of name" did not work a change in "discipline," in the general Law of the Church, "but that when the severance alluded to took place, and ever since, this Church conceives of herself as professing and acting on the principles of the Church of England."—(*Perry's "Jour. Con.," Vol.* I., *p.* 431.)

These citations prove conclusively the *intent* of the Church regarding the English Ecclesiastical Law, that she was "*far from intending* to depart from the Church of England in any essential point" of Ecclesiastical Law "further than local circumstances" might require; a direct avowal that in refusing to depart therefrom she *did intend to adhere* to the Ecclesiastical Law of England so far as it was applicable and not superseded by any enactments of her own. And when she was requested to enact a portion of that Law as the Law of the Church, she unhesitatingly replied that it was unnecessary, as the whole Ecclesiastical Law of the Church of England was "*now obligatory on this Church.*"

Having proven that it was the intent of the Church to adhere to the English Ecclesiastical Law, I will next endeavor to prove that the Church was under an "*antecedent obligation*" not to depart therefrom.

In order to secure the consecration of American Bishops from the hands of the English Bishops, the American Church made a Concordat, not under that name, perhaps, or explicitly described as such, but none the less a Concordat in substance, with the Church of England, that if her request for the consecration of American Bishops was granted, she, on her part, would retain "the same *discipline* and forms of

worship, as far as was consistent" with the Constitutions of the States.

The Convention at Philadelphia, 1785, addressed a petition to the Archbishops of Canterbury and York and the Bishops of the Church of England, praying them to "confer the Episcopal character" on such persons as might be recommended by the Conventions of the several States.

At the same Convention, the Liturgy of the Church had been subjected to many proposed alterations, and a proposed Constitution had also been prepared. Many of the alterations in the "Proposed Book of Common Prayer" were of such a character, and so radical, as to meet with general disapprobation, and some of the clergy, as Bishop White tells us ("*Memoirs*," *1st Ed.*, *p.* 115), "had been very early in conveying to their clerical acquaintance in England an unfavorable representation of the spirit of the proceedings" of the Convention of 1785. From these reports the English Prelates were apprehensive that the Church in America intended a further departure from the doctrine, discipline and worship of the Church of England than was necessary. In their reply to the petition of the Philadelphia Convention (February 24, 1786), the English Bishops, after assuring the members of the Convention of their desire to comply with the prayer of their address, conclude their reply as follows: "While we are anxious to give every proof not only of our brotherly affection, but of our facility in forwarding your wishes, we cannot but be extremely cautious, lest we should be the instruments of establishing an Ecclesiastical system which will be called a branch of the Church of England, but afterwards may

possibly appear to have departed from it essentially, either in doctrine or in discipline."—(*Perry's "Jour. Con.," Vol.* I., *p.* 36.)

The next Convention, which met in Philadelphia in June, 1786, proceeded at once to reverse those decisions of the former Conventions which might seem to any to indicate a purpose, on their part, of departing from the Church of England "either in doctrine or in discipline," as indicated in the letter of the English Prelates. This action was taken, as Bishop White tells us, "without even an opposition."—("*Memoirs*," 1*st Ed.*, *p.* 126.)

The Convention also adopted a resolution that a committee be appointed to draft an answer to the letter of the Archbishops and Bishops of England, such "as will satisfy them that no such alterations as would be any essential deviation from the Church of England have been adopted or intended."—(*Perry's "Jour. Con.," Vol.* I., *p.* 37.)

The answer was formally adopted and signed by the members of the Convention on June 26, 1786, in which they said: "While doubts remain of our continuing to hold the same essential articles of faith and discipline with the Church of England, we acknowledge the propriety of suspending a compliance with our request." With this acknowledgment of the justice of the position of the English Prelates, they then proceed to make this declaration and promise to the Bishops of the Church of England: "We are unanimous and explicit in assuring your lordships that we neither have departed, nor propose to depart, from the doctrines of your Church. We have retained the same discipline and forms of worship as far as was consistent with our

civil Constitutions."—(*Perry's "Jour. Con.," Vol.* I., *p.* 44.)

Before receiving this letter from the Convention, the Archbishop of Canterbury wrote, under date of July 4, 1786, to the Committee of the General Convention, communicating the Act of Parliament which had been passed to permit the consecration "to the office of Bishop persons being subjects or citizens of countries outside of his majesty's dominions." The letter concludes as follows: "But whether we can consecrate any or not, must yet depend on the answers we may receive, to what we have written."—(*Perry's "Jour. of Con.," Vol.* I., *p.* 55.)

The Convention of 1786, which had adjourned in June to await the replies of the English Bishops, reassembled at Wilmington, Del., on October 10, 1786, and an Act was agreed upon and established, entitled, "AN ACT OF THE GENERAL CONVENTION OF THE CLERICAL AND LAY DEPUTIES OF THE PROTESTANT EPISCOPAL CHURCH IN THE STATES OF NEW YORK, NEW JERSEY, PENNSYLVANIA, DELAWARE, AND SOUTH CAROLINA, HELD AT WILMINGTON, IN THE STATE OF DELAWARE, ON WEDNESDAY, THE 11TH OF OCTOBER, 1786."

In this Act, they first relate that "the said Convention, anxious to complete their Episcopal system by means of the Church of England, did subscribe and transmit an address to the Most Reverend and Right Reverend the Archbishops of Canterbury and York, and the Bishops of the Church of England, earnestly entreating that venerable body to confer the Episcopal character on such persons as should be recommended by this Church in the several States so repre-

sented," and that they had "received the most friendly and affectionate letters in answer to the said address from the said Archbishops and Bishops, opening a fair prospect of the success of their said applications, but at the same time earnestly exhorting this Convention to use their utmost efforts for the removal of certain objections by them made." They then proceed to declare as follows: "In pursuance whereof, this present General Convention hath been called, and is now assembled, and being sincerely desirous to give every satisfaction to their Lordships which will be consistent with the union and general content of the Church, they represent, and declaring their steadfast resolution to maintain the same essential Articles of Faith and Discipline with the Church of England, do declare," etc.—(*Perry's "Jour. of Con.," Vol.* I., *p.* 58.)

This Act was ordered by the Convention to be sent to the Archbishops of Canterbury and York, together with a letter in answer to the late letters of those Prelates, which concludes as follows: "We have taken into our most serious and deliberate consideration the several matters so affectionately recommended to us in those communications, and whatever could be done towards a compliance with your fatherly wishes and advice, consistently with our local circumstances and the peace and unity of our Church, hath been agreed to, as we trust will appear from the enclosed Act of our Convention, which we have the honor to transmit to you, together with the Journal of our proceedings." —(*Perry's "Jour. of Con.," Vol.* I., *p.* 61.)

Such, in brief, were the steps taken by the Church in America for the obtaining from the Prelates of the Church of England the consecration of Bishops for the

Church in America, and in which is plainly evidenced the reasons for and the terms of the Concordat (so far as they relate to the purpose of this book) finally established between the Church in America and the Church of England.

First, the petition of the American Church to the English Prelates, praying them to consecrate Bishops for the Church in America, then their reply stating their willingness so to do, provided they do not thereby establish a branch of the Church of England which shall afterwards "appear to have departed from it essentially, either in doctrine or in *discipline*"; then another letter from the Archbishop of Canterbury, stating that their consent to the consecration of Bishops for America will "depend on the answers we may receive to what we have written"; then the reply of the American Church in Convention assembled, assuring the English Prelates that they did not propose to depart from the doctrines and discipline of the Church of England, and that they had "retained *the same discipline* and forms of worship as far as was consistent" with the laws of the land; then at the next Convention, the Church entered into a solemn agreement and Concordat with the Church of England, and established it as an "Act of this Corporation," that if the Bishops of the Church of England would "confer the Episcopal character on such persons as should be recommended by the Church in the several States," she on her part agreed and declared her "*steadfast resolution to maintain the same essential Articles of Faith and Discipline with the Church of England.*"

It is difficult to see how the American Church could

have made a more binding Concordat on her part. It was not a mere resolution, it was an "Act of the General Convention." She intended to establish it, and did so establish it, as a Law of the Church. The Bishops of the Church of England, on their part, accepted and confirmed this Concordat by their act in consecrating the Rev. Drs. White and Provoost as Bishops for the American Church.

The American Church thus received certain powers from the English Church under certain conditions, one of which was, that she was not to depart from the Church of England in any essential point of Ecclesiastical Law, or further than local circumstances, or the law of the land required. To these conditions, as the terms under which she received those powers, she bound herself by a solemn enactment of her General Convention. If thereby the Church bound herself to retain the English Ecclesiastical Law, a fact impossible, in my judgment, of being controverted, then is the English Ecclesiastical Law, so far as it is applicable to our circumstances, and not superseded by enactments of our own, the Law of our Church to-day, and nothing but a repeal thereof, either actual or plainly implied, can release the Church from the binding force and obligation of that Law.

Bishops White and Provoost, who were consecrated in accordance with the terms of this Concordat, believed the Church to be thus bound, and ever so maintained, stoutly resisting every attempt that was made in any succeeding General Convention to depart therefrom.—(See *Journals of General Conventions of* 1789 *and* 1792; also, *Bishop White's* "*Memoirs*," 1*st Ed.*, *p.* 175, *et seq.*) And every General Convention of

the Church, in which the question has arisen, has likewise so declared and maintained.

The General Convention of 1808 declared that the whole Ecclesiastical system of the Church of England (so far, of course, as it was adapted to our circumstances and not superseded by our own legislation) was "now obligatory on this Church," and the General Convention of 1814 declared that "when the severance alluded to took place, and ever since, this Church conceives of herself as professing and acting on the principles of the Church of England."

These facts evidence the conclusion, in my opinion an irresistible one, that when the American Church began her national life, she began it under an "antecedent obligation," under a Concordat with the Church of England, that, as far as was possible, there should be no essential departure, on her part, from the Ecclesiastical Law of that Church.

And with this declaration has she prefaced her Liturgy, and so long as that declaration there remains, that she "is far from intending to depart from the Church of England in any essential point of doctrine, *discipline*, or worship, or further than local circumstances require," so long can she not depart therefrom, without stultifying herself, and violating a most solemn legal and moral obligation.

I have previously shown that the Common Law of the Colonists included both the Common Law and the Statute Law of England, at the time of the colonization of this country, and that in this body of Colonial Common Law was included the Common Law Ecclesiastical, and the Canon and Statute Law of the Church of England.

This body of Colonial Common Law is the Common Law to-day, of every State in the Union, with the single exception of the State of Louisiana. From this fact may fairly and justly be drawn an argument for the continued force of the Ecclesiastical portion of this Common Law upon the American Church. I but merely state the fact that such an argument may justly be drawn therefrom, without entering into the consideration thereof, and that the Courts have decided that the Common Law Ecclesiastical is included in the Common Law now in force in the several States.—(See *Crump* v. *Morgan*, 3 *Iredell's Eq. Rep.*, 91 ; *Gaskins* v. *Gaskins*, 3 *Iredell's L. Rep.*, 158 ; *Bogardus* v. *Trinity Church*, 4 *Paige's Rep.*, 177.)

Let us again apply the "undeniable proposition," before stated, to the facts we have now proven and see how far the terms of that proposition have been complied with by these facts. The proposition is, that "*laws once in force over an organization must remain in force so long as that identity continues, unless they expire by limitation or are repealed by the law-making power.*"

It has been conclusively proven, and will not, I think, be doubted by any, that the English Ecclesiastical Law was "once in force over the organization" known as "The Church of England in the Colonies," and having once been in force it must have remained in force, so long as the identity of that Church continued, unless it expired by limitation, or was lawfully repealed. But we have shown that the Church's identity did continue ; that she continued to be the same identical Church, under the name of "Protestant Episcopal," that she was under the name of "Church of England"; that a change of name merely works no

change in identity; that the Church herself, speaking with authority, has declared "that the 'Protestant Episcopal Church in the United States of America' is the *same Body* heretofore known in these States by the name 'of the Church of England'"; and that the highest Courts of our land have also assumed and declared this continued identity of the Church. Then, since the identity of the Church has continued, must the law once in force in that Church necessarily continue, unless it has expired by limitation, or been repealed by the law-making power. But it has not expired, could not expire, by limitation, nor has it been repealed by the law-making power. On the contrary, the law-making power of the Church, which is the General Convention, has, as we have shown, repeatedly declared her adherence to that Law, the English Ecclesiastical Law, once in force over her, and recognized it as being still of force and obligation upon her. In order to obtain from the English Church the consecration of her Bishops that she might be able to retain and continue her Episcopal character, that law-making power of the Church made a Concordat with the Archbishops and Bishops of the Church of England, that they would *not repeal* that Law once in force over her, and in her very Liturgy even, has the Church placed the declaration that she still retains the Ecclesiastical Law of the Church of England. Hence, the conclusion is irresistible, that the American Church being identical and continuous with the Church of England, therefore, the Law of that Church, having once been in force over her, and never having expired by limitation, nor been repealed by the law-making power, took its place *proprio vigore*, and continued to be, so far as

adapted to our condition and circumstances, a part of the Law of the American Church. That the English Ecclesiastical Law, with certain modifications, continues to be a part of the Law regulating the affairs of our Church to-day, is not only the mind of the Church herself, as we have seen, it is also the opinion of the great majority of the learned canonists of the Church. Bishop White, whom Judge Ludlow (*Batterson* v. *Thompson*, 8 *Phil. Rep.*, 251) names, as "that venerable Prelate whose name and opinions to this day, even in a civil court, carry with them great weight," says: "To pray for our civil rulers was a duty bound on us by a higher authority than that of the Church. In all other respects, I hold the former Ecclesiastical system to be binding."—(*Appendix to Wilson's "Life of Bishop White," p.* 341, cited in *Hoffman's "Law of the Church," p.* 31.)

Mr. Odenheimer, afterwards Bishop of New Jersey, says: "It appears to me to be a true view to maintain our right to the Ante-Revolution Canon Law of the English Church, in all points applicable, and where it has not been distinctly rejected or provided for by our own canonical legislation."—(*Essay Pub. Alum. Assoc.*, 1841, *pp.* 58, 59, cited in *Hoffman's "Law of the Church," p.* 11.)

Bishop Hopkins, who, previous to his entering the ministry, was a lawyer of great ability, says: "The Law of the Church of England continues to be our Law to this day, so far as it has not been superseded by positive Ecclesiastical legislation."—("*Law of Ritualism*," *p.* 80.)

The Rev. Dr. Hawks, a canonist of eminent ability and a recognized authority on Canon Law, says: "The opinions which were entertained in the mother

country, and the decisions which had there been made on matters of Ecclesiastical Law or usage, up to the severance of these Colonies by the Revolution, were, as far as applicable, held to be the guide of the Church of England here ; and though the Independence of the United States dissolved the connection, it evidently did not destroy the prevailing opinions among Churchmen as to matters and usages touching the Church. Our branch of the Catholic Church, in establishing her system of polity, must therefore obviously have commenced her career with opinions, feelings and habits, all derived from her former association with the Church of England. To the Common and Canon Law of England we must therefore look, if we would fully understand the origin of much of the Law of our own Church."—(" *Constitution and Canons*," *p.* 265.)

In the case of the Rev. Cave Jones, we have the opinion of Thomas Addison Emmet, one of the ablest lawyers of his day. After stating that Law is prior to the existence of a State, and that it comes by inheritance, he proceeds to say : " So is it with our Ecclesiastical Government. In organizing and becoming members of the Protestant Episcopal Church, no one considered himself as becoming a member of a new religion, or as adopting a different form or rule of Ecclesiastical Government, except so far as depended upon the connection in England between Church and State, and the regulations of that country produced by the King's being the head of the Church. These were all necessarily rejected as being inapplicable to our situation ; *but in every other respect*, the rules and laws of our Mother Church, where they can be applied, are the Common Law of our own religious associa-

tion."—("*Report of the Case*," *etc.*, *p.* 493, *New York*, 1811; cited in *Hoffman's* "*Law of the Church*," *p.* 38, *Note.*)

I will cite but one more of the many opinions that can be adduced in support of the proposition under consideration, and that one that is more than an opinion; one that has been recognized by the Courts as an authority on Ecclesiastical Law, and by them cited with approval. I refer to "*The Law of the Church*," by Judge Hoffman, at one time Vice-Chancellor of the State of New York; a work from which I have already made many citations in support of the different propositions sought to be established.

In the summing up of his argument that the Church continued to be the same in every essential feature of "doctrine, discipline, and worship" that she was before the Revolution, and after stating that the Church in one of her most solemn acts declared that she meant not to depart from the Church of England in discipline further than local circumstances required, he says (*p* 41): "When we find that the body of English Ecclesiastical Law was an undoubted part of discipline in that Church and in the Colonial Church; when we find no discrimination made between what of discipline is binding and what is annulled, the conclusion seems irresistible, that this Law, with necessary modifications, retained the same authority after the Revolution which it possessed before."

And again, after speaking of the alterations in the discipline and the Liturgy of the Church, made necessary by the Revolution, and of the Canon Laws of the Church, and the Civil Laws of the States, which comprise a body of regulations for the Church, he says (*p.*

64): "But there will yet remain many cases not provided for. In these I submit we are to ascertain what was the law of the English Church. By that, such cases are presumptively to be decided; leaving it to be shown that such law is repugnant to some principle, settled custom, or institution of our own, secular or ecclesiastical." The Civil Courts, whenever the question has come before them, have uniformly recognized the truth of the proposition contended for, and so clearly and convincingly set forth by Judge Hoffman, that the English Ecclesiastical Law, with certain necessary modifications, is of force in the American Church to-day.

In *Lynd* v. *Menzies et. al.* (33 *N. J. L. Rep.* [4 *Vroom*] 162), the direct question as to what laws were of force and obligation in the Protestant Episcopal Church came directly before the Court. Chief-Justice Beasley, in delivering the opinion of the Supreme Court, declared: "The English Ecclesiastical Law, although somewhat modified by new circumstances and by American usages and statutes, constitutes the substantial basis of the law controlling the affairs of this particular Church."

In *Livingston* v. *Rector et. al.* (45 *N. J. L. Rep.* [16 *Vroom*] 230), the Supreme Court of New Jersey again decided the same question. The Court held that "The English Ecclesiastical Law forms the basis of the law regulating the affairs of the Episcopal Church in this country, and is in force, except so far as it has been modified and changed by statute, and by the usages and Canons of the Church."—(*Lynd* v. *Menzies et. al.* [4 *Vroom*], 162. *Hoffman's* "*Law of the Church*," 14, 30, 34, 64, cited and approved.)

In *Jennings* v. *Scarborough* (56 *N J. L. Rep.* [27 *Vroom*], 401, decided in 1894), the Supreme Court again affirmed the decision of the Court in *Lynd* v. *Menzies, et. al.* (4 *Vroom*, 162.)

In the case of *Batterson. et. al.* v. *Thompson et. al.* (8 *Phil. Rep.*, 251), the Court declares: "I quite concur with Chief-Justice Beasley in the remark made by him in the case heretofore cited. (*Lynd* v. *Menzies, etc.*)"

This decision of the New Jersey Supreme Court (*Lynd* v. *Menzies, etc.*) has been cited with approval, by the courts in many of the States, and I can find no case reported wherein its decision has been overruled, or even questioned, and until it is overruled, it must be taken as voicing the opinions of the courts as to the continuing force of the Ecclesiastical Law of the Church of England upon the American Church. The courts of this country have universally acted upon this assumption in deciding the Ecclesiastical cases which have come before them.—(See *Heeney* v. *St. Peter's Church*, 2 *Edward's Ch. Rep.*, 608; *Humbert* v. *St. Stephen's Church*, 1 *Edward's Ch. Rep.*, 308; *Chase* v. *Cheney*, 58 *Ill. Rep.*, 509; *Crump* v. *Morgan*, 3 *Iredell's Eq. Rep.*, 91; *Gaskins* v. *Gaskins*, 3 *Iredell's L. Rep.*, 158; *Terrett* v. *Taylor*, 9 *Cranch*, 43; *Watson* v. *Jones*, 13 *Wall.*, 679; *Society, etc.*, v *New Haven*, 8 *Wheaton*, 464; *Mason* v. *Muncaster*, 9 *Wheaton*, 445.)

The conclusion derived from the consideration of the facts before adduced, and from the opinions and authorities above cited, is irresistible, that the English Ecclesiastical Law, with certain necessary modifications, forms the basis of the Law regulating the Protestant Episcopal Church, and is in force and of obligation in

that Church to-day, so far as it is applicable, and not superseded by our own civil or Ecclesiastical enactments.

These modifications have been most clearly and concisely stated by Judge Hoffman, and as his words have received the approval of the courts (*Livingston* v. *Rector et al.*, 16 *Vroom*, 230), I quote them on this point.

After stating "that upon every question of construction of a phrase or precept, its admitted acceptation in the English Law is to prevail until otherwise expressly interpreted," he says: "I may state the result in these propositions:

"1. The English Canon Law governs, unless it is inconsistent with, or superseded by a positive institution of our own.

"2. Unless it is at variance with any civil law or doctrine of the State, either recognized by the Church, or not opposed to her principles.

"3. Unless it is inconsistent with or inapplicable to that position in which the Church in these States is placed.

"And let it not be thought," he says, "that in this loyalty to the English Law we abjure the liberty of a National Church, or admit a subserviency to a foreign authority. . . . In submitting to the guidance of English authority, we render no other allegiance than every honest judge in the land renders to the decisions of Westminster Hall in civil matters. These decisions are the witnesses and testimonials of the law, liable to be discredited, open to controversy; but standing, until this is done, sure and faithful witnesses. So the cases in the Ecclesiastical Courts are the credible expositors of English Canon Law, and it is that Law to which we

are to resort for guidance in all unsettled points. We shall find this submission more useful, and more noble than the license and the anarchy of an unrestricted, undirected, and unenlightened judgment."—("*Law of the Church*," *pp.* 64, 65.)

I know of no more fitting words with which to close this discussion of the Sources and Sanctions of American Church Law, and of the force and obligation therein of the English Ecclesiastical system, than the words, so true and expressive, of this honored son of the Church. In his "*Law of the Church*" (so many times referred to in this work, and from which I have already quoted so freely), Judge Hoffman has rendered most valuable service, in helping to make clear the interpretation and application of the Church's Laws, and I have less hesitation in making his language my own, for the reason that the work referred to has long been out of print, and is, therefore, accessible to but few of the clergy and laity of the Church to-day. His words may well be pondered by those who would treat the American Church as a newly-reared fabric, the creation of a few clergy and laity in 1789, "without fathers and without brethren—as if it had fallen, like the Roman shield, immediately from Heaven." To those who would sever the ties that bind us to our Mother Church, who would deny us our rightful inheritance in that great body of Ecclesiastical Common Law, which is but the "wisdom, counsel, experience and observation of many ages of wise and observing men," I would most earnestly commend these wise and thoughtful words of Judge Hoffman: "What advantage can we reap by severing the tie with the Church of England, in this particular, when the wisest

of our fathers cherished the connection in every other, as the pillar and foundation of truth?"

"And what advantages do we not lose, when we disclaim this healthful and time-honored union? Looking at the question merely as a lawyer and searcher for truth, we abandon (and for a dim, untrodden path,) the road illumined by the shining lights of English intellect in the Church and on the bench. For our instruction and guidance we have the well-known names of Coke, Holt and Hardwicke, of Nichols, Stowell and Lee, in the tribunals of justice; of Ridley, Gibson, Stillingfleet, and a cloud of others, among the English canonists. Under their auspices, we shall find 'happier walls' than our own abilities can rear, or our own fancies can devise. Here we may attain to certainty, the mother of quietness and repose."

PART TWO.

The Law of the American Church.

CHAPTER I.

OF THE INCORPORATION OF CHURCHES.

WHILE any number of persons may form themselves into an organization for the purpose of conducting their public religious services in conformity to the Liturgy of the Protestant Episcopal Church, and, by further conforming to the rules and regulations of the Ecclesiastical authority thereof, become component parts of that Church, and entitled to certain Ecclesiastical rights and privileges, they do not thereby become a corporate body, entitled to corporate powers. In order to secure the benefits, rights and powers of a corporate body, the Ecclesiastical organization must become incorporated, under the provisions of some special law, or, as is usually the case, some general law relating to the incorporation of religious societies.

The purpose of incorporation has been well stated by Chancellor Kent: "It was chiefly for the purpose of clothing bodies of men in succession with the qualities and capacities of one single, artificial, and fictitious being that corporations were originally invented, and, for the same convenient purpose, they have been brought largely into use. By means of the corporation, many individuals are capable of acting in perpetual succession like one single individual, without incurring any personal hazard or responsibility, or exposing any other property than what belongs to the corporation in its legal capacity."—(2 *Kent's Com.*, 14*th Ed.*, 268.)

The benefits of incorporation are so manifest as to call for no extended consideration. They may be stated, in part, as follows: First, convenience in the management of the interests of the Parish, and the carrying on of its work; second, the protection of the property of individual members of the Parish from any liability for Parish indebtedness; third, "the light of the Statute Law which clearly defines and regulates the duty of the corporate body."

With but few exceptions, the different States have made provision, more or less full, in their Statute Law for the incorporation of religious societies. It is unnecessary to give in detail the Statute Law of each separate State on the incorporation of Churches. A statement of certain general principles that will be found to prevail in most of the States will be sufficient.

The Statute Law of several of the States requires, as a prerequisite to incorporation, that a congregation desiring to become incorporated shall first have become duly organized according to the Constitution and Canons, or usages, of the Protestant Episcopal Church, in that Diocese in which such congregation may be situated, while other States require no previous Ecclesiastical organization.

Provision for the Ecclesiastical organization of a Parish is made by the Constitution and Canons of the Church, in most of the Dioceses.

The first step is usually, and always should be, to notify the Bishop, or if there be no Bishop, then the Standing Committee, or its President, according to the law of the Diocese, setting forth such facts as may be required by the Canons of the Diocese.

As all jurisdiction rests in the Bishop, until he dele-

gates it otherwise, his consent is necessary, unless dispensed with by Statute or Canon, to the organization of a Parish. His consent, and (when made necessary), the consent of the Standing Committee being obtained, the Parish may proceed to complete its Ecclesiastical organization, conformably to the requirements of the Constitution and Canons of the Diocese. In Maryland the consent of the Convention is required.

In some Dioceses the Parish is required to adopt Articles of Association or Agreement, or a Constitution, as a preliminary step to its recognition by the Ecclesiastical authority as a part of the Church in the Diocese.

The mode of procedure for the incorporation of a Church is far from uniform, in fact, is hardly the same in any two States.

In most of the States, there is a general law for the incorporation of religious societies; special provision being sometimes made for the incorporation of Protestant Episcopal Churches. In a few of the States there is a special act for the incorporation of Protestant Episcopal Churches, as in Michigan and Maryland.

In other States, as in Connecticut, the law simply recognizes the Ecclesiastical organization and gives to the Wardens and Vestrymen the legal standing of Trustees, empowering them to receive, hold and dispose of property for the maintaining of religious worship according to the tenets of the Church, provided they have been so authorized to act by the Parish.

In a few States no provision is made for the incorporation of religious societies, and resort must be had to the Statute made for the incorporation of other societies or associations.

(For forms of petition, and consent of Bishop and Standing Committee, see *Appendix A.*)

NOTICE.

Whenever a congregation or any number of persons desire to form themselves into a body corporate, public notice of such intention must be given in the manner prescribed by the Statute.

In some States a written notice is required. In Delaware, for instance, the law requires the "publishing a notice for ten days previous to the time of such meeting in some newspaper published in the city or township in which such church is located: and if no newspaper is published therein, then such notice may be given by posting the same in three of the most public places in such city or township."

In New Jersey a written notice, designating the day when, and the place where, the meeting is to be held, must be read during public service on two successive Sundays preceding the day of meeting.

In New York the law requires the notice to be made public at least two weeks prior to the meeting, either by the "reading of such notice in time of divine service, at the usual place of worship of such parish or congregation, or by posting the same conspicuously on the outer door of such place of worship."

In those States where the Statute Law prescribes the requirements of the notice, such requirements should of course be explicitly complied with; and in States where the requirements are not set forth in the Statute, nor the manner in which it shall be given, it will probably be sufficient if the notice state the object, the place, and the time of meeting. Notice of

the meeting should be given either by reading it in time of divine service, or by posting it on or near the door of the usual place of worship, or if there be no such place of worship, then in some conspicuous place near to the proposed place of meeting. When the Statute Law requires the notice to be read "in time of divine service," it will not be a sufficient compliance with the law to read it at a service held at an unusual hour on Sunday.—(*Dahl* v. *Palache*, 68 *Cal.*, 248.)

The hour for the meeting should be one that is seasonable and convenient during either the day or the early evening.

While the meeting may adjourn to another hour or day, it must meet at or near the hour designated. A meeting held a few minutes, or within an hour after the time appointed, would probably be a valid meeting, but no meeting would be legal if held before the hour appointed.—(*People* v. *The Albany and Sus. R. R. Co. et al.*, 55 *Barb.*, 344.)

PLACE OF MEETING.

The place of meeting should be at or near the usual place of worship of the congregation desiring to become incorporated; but if, as might well be the case in some of the States, the persons so desiring had theretofore held no public religious service, any convenient place in the town where they or a majority of them resided would be sufficient.

THE MEETING.

First. The Quorum. The Statutes of most of the States prescribe the number of persons necessary to be present in order to constitute a quorum for the transaction of the business of the meeting. Unless the

number so required be present, no valid meeting can be held. "But it would be competent for a less number to adjourn the meeting to such time during the day or evening as might be necessary to secure a sufficient attendance."—(*Humphrey's "Law of the Church," p.* 6.)

Most of the Dioceses in those States whose laws are silent regarding the number required to make a quorum for the incorporation of a Church or Parish, prescribe by Canon the number necessary for a quorum at such meeting. In all cases where the Statute Law is silent, the Diocesan Legislation governs, and its requirements must be complied with.

Second. The Officers of the Meeting. A quorum being present, the first step toward organization is the election or appointment of officers of the meeting. A President or Chairman, and a Secretary or Clerk are the necessary officers. In some States and Dioceses, judges of election must also be appointed. If there be a Rector, he presides *virtute officii.* In most of the States and Dioceses the law provides that if there be no Rector, then one of the Wardens shall preside ; and in some States and Dioceses provision is made that in the absence of a Rector and Wardens, a Vestryman shall be chosen to preside. This of course, presupposes an Ecclesiastical organization, with Rector, Wardens and Vestrymen, already existing, but where no such organization previously exists, then the meeting must first proceed to choose some one of its members to preside. After the meeting is called to order, a Secretary or Clerk should be chosen or appointed to make a record of the proceedings of the meeting, unless the law provides, as in some cases, that the Secretary or Clerk of the Vestry shall so act.

THE SCOPE OF THE MEETING.

This will depend on the Statutes of the State, or the Canons of the Diocese, or both. In many of the States, the Statute explicitly sets forth what shall be done at the meeting; in others, the Statute simply provides that a meeting shall be held, and Articles of Association or Agreement, or a Charter in conformity with the requirements of the Statute or the Canons of the Diocese be signed, or signed and acknowledged by the members of the meeting, or acknowledged by the officers thereof, and filed with a designated officer. In Massachusetts and a few other States no Certificate, or Charter, or Articles of Association are required to be filed; the Massachusetts Statute, after giving explicit directions as to how the meeting shall be warned, and organized, and stating that any ten or more persons, male or female, may apply to a Justice of the Peace for a warrant directing that a meeting be called, simply declares that such persons upon complying with the Statute shall become a corporation under any name they may assume at the meeting, with all the rights, privileges, etc., relating to religious societies. In Arkansas the Statute Law merely declares that trustees of religious societies shall have certain rights and powers.

It would be a work of unnecessary labor to give in detail the various requirements of the Statute and Canon Law in the several States and Dioceses relative to the questions to be decided at the meeting. The law should be closely followed and its requirements strictly complied with.

It may be stated, as a general rule, that the persons

present at the meeting, in the absence of any law to the contrary, may determine:

First. Whether they shall become incorporated or not. If this question be decided in the affirmative, then,

Second. The name by which the proposed corporation shall be known.

Third. The date on which the annual election of Wardens and Vestrymen shall take place.

Fourth. What number of Vestrymen shall be annually elected. (The minimum and maximum number is fixed by law in most cases.)

Fifth. The qualified voters present should then elect two Wardens and the number of Vestrymen before agreed upon, to serve until the next annual election, or until their successors are duly elected. In the absence of any law requiring decision to be made by ballot, the different questions may be decided by a *viva voce* vote.

WHO MAY VOTE.

The qualifications of voters are prescribed either by the Statute Law of the State or by the Canons of the Diocese. In some States, as in New York, the Statute Law prescribes the qualifications of voters; in others, as in New Jersey, the law simply says that the qualifications of voters shall be conformable to the Constitution and principles of the Protestant Episcopal Church in the State; and in still other States, as in Kansas and Arkansas, the Statute Law is silent on the question of qualifications of voters. Where such is the case, the Church may and should prescribe such qualifications.

Only such persons as possess the qualifications re-

quired by the law of the State or of the Diocese have a right to vote, and it is the duty of the presiding officer, or such other officer or officers as may be designated by law for that purpose, to reject illegal votes when challenged. The Courts have decided, however, that the reception of illegal votes, if shown to be insufficient to change the result, will not necessarily invalidate the action of the corporators.—(*People et al.* v. *Tuthill et al.*, 31 *N. Y.*, 550.)

As this question of qualifications of voters will be more carefully considered under this same head in the next chapter relating to annual elections, a further consideration thereof at this point is unnecessary.

CONDUCT OF ELECTION, AND QUALIFICATIONS OF OFFICERS.

First. Conduct of Election. The election must be held at the time stated in the notice, unless a legal adjournment is had. Any material deviation from the hour named therein will be fatal to the validity of the election.

While, in the absence of any law requiring the election to be by ballot, an election by a *viva voce* vote would be legal, it is much the better course to elect Wardens and Vestrymen by ballot, that course having received the sanction of a long and almost universal custom.

If the law does not provide otherwise, the Rector, who, when present, presides *ex-officio*, should appoint tellers to collect and count the votes. In New York and several other States the law prescribes that the polls shall be kept open for one hour, or longer in the

discretion of the presiding officer, or if the majority of the voters present so desire.

In the absence of any such provision of the Statute or Canon Law, the voters themselves may determine the length of time that the polls shall remain open ; if no time is so determined upon, the polls should be kept open a reasonable length of time, sufficient at least to give to all qualified voters present due opportunity to cast their ballots. The polls being closed and the tellers having counted the votes, the presiding officer declares the result, or causes it to be declared under his direction.

Second. Qualifications of Wardens and Vestrymen. These qualifications are in nearly every case prescribed by the Statute or Canon Law, and will be more particularly noted under this same head in the succeeding chapter. The requirement is almost universal that Wardens, at least, should be communicants. It may also be stated that, in the absence of any express provision of law, only a qualified voter is eligible to the office of Warden or Vestryman.

CERTIFICATE.

In a majority of the States the law requires that a Certificate of the proceedings of the meeting, as it is called in New Jersey, or Certificate of Incorporation, as it is called in New York, be filed with some designated civil officer.

The New York Statute may be cited as containing the maximum of requirements. It directs the setting forth of the following facts:

First. The fact of the calling and holding of such meeting.

Second. The name of the corporation as decided upon thereat.

Third. The county, and the town, city or village, in which its principal place of worship is, or is intended to be located.

Fourth. The day of the week commencing with the first Sunday in Advent, upon which the annual elections of the corporation shall be held.

Fifth. The number of Vestrymen decided upon at such meeting.

Sixth. The names of the Vestrymen elected at such meeting and the term of office of each.

Seventh. The names of the Church Wardens elected at such meeting and the term of office of each.—(*Laws of* 1909 [*N. Y.*], *Ch.* 51, *Art.* III., § 41.)

This Certificate must be duly executed and acknowledged by the presiding officer, and also by two persons present and voting at the meeting, and filed in the office of the Clerk of the County therein specified.

In Minnesota the law requires the name of the Rector, if any, and the date of the organization of the Parish to be stated.

In some States, as in Kansas, the law directs a Charter duly signed and acknowledged by five or more persons, to be filed in the office of the Secretary of State, setting forth the facts by law required. In Michigan and a few other States Articles of Agreement must be properly executed and acknowledged, and then recorded in the office of the Clerk of the County in which the Church is located. In some States, as in Massachusetts, Connecticut, and Arkansas, no Certificate is required to be filed.

In Florida a proposed Charter, setting forth certain

facts, must be presented to the Judge of the Circuit Court of the County in which the organization is situated, subscribed by the intended corporators and properly acknowledged.

In Georgia the law directs that in case one or more proper persons present a petition to the Superior Court, showing that a Church has been or is about to be established in the County where the Court is then sitting and praying for certain corporate powers, the Court may grant such corporate powers for a term of twenty years, unless sooner revoked by law. Power is also given to the Court to amend the Charter.

In California the Charter must state the number of years, not exceeding fifty, for which it is to exist.

In Illinois the law directs the chairman of the meeting to make an affidavit of the proceedings of the meeting, and file the same in the office of the Recorder of Deeds.

In the State of Pennsylvania a Charter setting forth certain facts, as prescribed by law, and duly acknowledged by at least three of the subscribers thereto, with proof of the publication of the notice, as required by law, must be presented to the Judge of the proper County for his approval, and when so approved, it must then be recorded in the office for the recording of deeds in the said County.

In those States where the law requires the filing of a Certificate, Charter, or Articles of Association or Agreement, it designates the proper officer with whom such Certificate, Charter, or Articles shall be filed.

The Certificate or Charter should be carefully drawn, containing a concise but complete recital of the proceedings of the meeting, together with the fact that

the required notice was duly given, and that all the requirements of the law have been complied with.

It need hardly be added that even where the law does not require a Certificate to be made, the Clerk or Secretary of the meeting should make a complete record of the proceedings of the meeting and transcribe them in the record book of the Parish, which record, when so transcribed, should be signed by both the presiding officer and the Secretary of the meeting.

TERMS OF OFFICERS ELECTED.

The terms of office of the Wardens and Vestrymen elected at this meeting continue until the first annual election on the day designated in the Certificate or Charter.

Provision is made, in a majority of the Dioceses, for the continuation in office of the Wardens and Vestrymen until their successors are elected. And even where no such provision is made, in case of failure to elect such officers at an annual election, the Wardens and Vestrymen previously elected would still continue in office and so remain until their successors were legally elected. "It is a well-settled principle that an annual officer continues until superseded by the appointment of another in his place."—(*McCall* v. *The Byram Mfg. Co.*, 6 *Conn.*, 428. See also 9 *Conn.*, 536; 6 *Johnson Rep.*, 158; 5 *Johnson Ch. Rep.*, 366.)

WHEN INCORPORATION COMPLETE.

Until the Certificate, Charter, or Articles of Association or Agreement have been duly filed, unless no such filing is required by law, the Church can exercise none of the rights or privileges of a corporate body. The

incorporation of the Church is not complete until the Certificate, Charter, or Articles are duly filed with the officer designated by law for that purpose. It is upon the due filing of such Certificate, etc., with the proper officer, when the law so requires, that the Rector (if there be one), Wardens and Vestrymen become a body corporate, by the name expressed in such Certificate, Charter, or Articles of Association or Agreement.

CHAPTER II.

OF ANNUAL PARISH MEETINGS.

PROVISION is made by Statute or Canon in every State or Diocese for an annual meeting of the qualified voters of an incorporated Parish. The date and the hour of this meeting are fixed by the Statute Law, or by the Charter, or other Article of Incorporation, or by the Canons of the Diocese, or by the Parish itself, and the meeting must be held on the day and at the hour so determined upon.

A meeting held upon a different day from the one fixed by law, or duly determined upon beforehand, would be illegal, and its proceedings null and void.—(*First Church, etc.*, v. *Hillery* 51, *Cal.* 155.)

NOTICE.

Due notice of the annual meeting must be given, according to the requirements of the Statute Law and the Canons of the Diocese. In the Diocese of Texas no notice seems to be required, unless the annual meeting is on some other day than Easter Monday. The notice should state the day and hour when, the place where, the meeting is to be held, and the purpose of the meeting.

Every subject that is intended to be acted upon at the meeting should be clearly specified in the notice. The Diocese of Connecticut is an exception to this general rule; the Canon only requiring that "the warnings of all Parish meetings, *except the annual*

meeting, shall contain a statement of the objects for which the meeting is called."

The manner of giving the required notice varies in the several Dioceses. Some require that it shall be read by the Rector, or officiating Minister, or, if there be no Rector or officiating Minister, by a Warden, on the two Sundays immediately preceding such meeting, in time of divine service ; in a few Dioceses it is made sufficient if the notice be so read on the Sunday prior to the meeting. In some, it is required that the notice be so read, *or* conspicuously posted on the outer door of the Church, or usual place of worship, a certain length of time, usually ten days or two weeks, before the meeting ; others require the notice to be both so read and so posted, while still others simply require that due notice be given.

The object of the notice is that the legal voters of the Parish may be fully apprised of the meeting, and what business is purposed thereat, in order that they may attend and exercise their rights. If the Statute or Canon Law gives the requirements of the notice, those requirements should be carefully complied with. (For forms of notice, see *Appendix B.*)

PURPOSE OF MEETING.

The chief purpose of the meeting is usually the election of Wardens and Vestrymen, to succeed those whose terms of office then expire, and election of delegates to the Diocesan Convention, unless the law provides that such delegates shall be elected by the Vestry. In some Dioceses, as in the Diocese of Chicago, a statement of the financial condition of the Parish is required to be read at every annual meeting thereof.

Questions concerning the alienation or encumbrance of real Church property, change of the name or title of the corporation, change in the number of Vestrymen, change in the date of the annual meeting, or any other question concerning which the law requires the consent of the Parish, and only in case the law does so require, may be considered at such annual meeting, provided the notice thereof gives due warning that such question or questions will be presented to the voters of the Parish at said meeting for their consideration and approval. But a Parish meeting has no voice in or control over those questions which the law leaves to the final determination of a legally constituted Vestry.

It may be stated as a general rule, that in most cases the legal action of an annual Parish meeting will be confined to the election of two Wardens and the legal number of Vestrymen, or, in some Dioceses, the election of Vestrymen alone, and, where so provided, of delegates to the Diocesan Convention. In a few Dioceses, as, for instance, those in the State of New York, the law directs that only one Warden and one-third of the whole number of Vestrymen shall be elected each year.

In some States the law provides that the Vestry shall elect the Wardens from among their own number; in others the Rector has the right to appoint one Warden, and the Parish or Vestry, as the law may provide, elects the other Warden.

The meeting must be held at the place designated in the notice, and this in most of the Dioceses must be the Church or usual place of worship of the Parish. The consensus of opinion seems to be, that a meeting

held in a Parish House connected with or closely adjoining the Church edifice, would probably be a sufficient compliance with the law, provided such Parish House was designated in the notice as the place of meeting.

QUORUM.

In the absence of any Law or Canon designating the number of legal voters necessary to be present at any annual meeting of a Parish in order to constitute a quorum, those who may be present at such meeting constitute a quorum for the transaction of its business. The rule is well stated in *Madison Avenue Baptist Church* v. *Baptist Church, etc.* (32 *How. Pr.* [*N. Y.*], 335): "Where the corporators are indefinite, . . . then such of them as assemble pursuant to regular call will constitute a quorum for the transaction of business, and a majority of said quorum can pass a resolution." A few of the Dioceses make provision for a quorum at the annual Parish meeting.

The Canons of the Diocese of Chicago provide that three legal voters shall constitute a quorum at all duly called Parish meetings; while those of Ohio provide that if less than eighteen qualified voters be present at a Parish meeting, and the Rector and one Warden, or the presiding officer and one-sixth of those present, concur in believing that the best interests of the Parish demand the postponement of the election, then the presiding officer may declare an adjournment of the meeting, and a postponement of the election to some designated day and hour not less than seven nor more than fourteen days after Easter Monday, and that public notice be given of the said adjourned meeting.

PRESIDING OFFICER OF MEETING.

The Rector, when present, presides *ex-officio* at all meetings of the Parish. It is a right inherent in his office, and of which he can be deprived only by express legislation, civil or canonical. The corporation cannot take away this right of the Rector to preside at its meetings.

This right of the Rector to preside at all meetings of the Parish has been questioned in the State of Delaware.

In the case of *State ex rel. Dunlap* v. *Stewart et al.* (6 *Houst. Rep.*, 359), the Court, in its instructions to the jury in the trial of the case intimated that, while the Rector of a Church was *ex-officio* chairman at all Vestry meetings when present, he was not necessarily, under the Constitution and Canons of Delaware, which were silent on the subject, chairman at the annual meetings of the parishioners held for the election of Wardens and Vestrymen, as such elections were merely temporal matters, and under the complete control of the parishioners themselves.

It appears from the statement of the case that a dissension having arisen between the Vestry of a Parish and its Rector, a Rev. Mr. Stewart, an application had been made by the Parish to the Bishop of the Diocese, asking him to terminate the relation between the Parish and its Rector ; that the Bishop, after consultation with the Standing Committee of the Diocese, and with their concurrence as provided by the Canons of the Diocese, duly notified the said Stewart that his relations to the Church as its Rector would cease at midnight on the following Easter Day (April 17,

1881). The election in question was held on the following Monday (April 18).

The meeting was called to order by the Secretary of the Vestry, and a chairman elected ; but the former Rector prevented the chairman from taking his seat, and abruptly took the chair himself, and called on the voters "to come up and vote quick." In the confusion that followed, no record was made of the voters, nor any motion made or carried that the former Rector should act as chairman of the meeting. Two sets of Wardens and Vestrymen were elected, one set by the adherents of the former Rector, and the other by his opponents ; and the question that came before the Court was as to which set were entitled to the offices of Wardens and Vestrymen of the Parish. The rectorship of Stewart having terminated by the lawful authority of the Bishop at midnight of the day before, he was therefore not the Rector of the Parish at the time of the meeting, and had no right to preside thereat. The question whether a Rector had the right, *virtute officii*, to preside at a Parish meeting was not therefore before the Court, and its opinion regarding the right of a Rector to so preside was simply an *obiter dictum*, and unnecessary to the determination of the case at issue.

The point was not argued before the Court, and no authorities presented to sustain the right of a Rector to preside at a meeting of the Parish.

The mere *obiter dictum* of a Judge on a question not before him, nor argued by counsel, and in all probability made without any examination of the authorities on the question, can hardly be considered as sufficient to change the well-settled rule of law on the subject,

nor to reverse the uniform decisions of the Courts establishing the Rector's right to preside at all meetings of the Parish.

In *Queen* v. *D'Oyly* (4 *Perry* & *Davidson's Rep.*, 52), it was decided, "The Rector has a common law right and authority to preside at such election [election of Church Wardens], as being the functionary who is at the head of the Parish for Ecclesiastical purposes."

In *Wilson* v. *M'Math* (3 *Phill. Rep.*, 67), it was decided, "In these meetings then of the Parish, consisting of 'Minister, Church Wardens and parishioners,' assembled in the Church for an Ecclesiastical purpose, that the *Rector parochiæ* should *not* preside, but be considered as a mere individual, would be most strangely incongruous. On sound legal principles he is the head and *præses* of the meeting."

Sir Robert Phillimore, in his learned work on Ecclesiastical Law (*2d Ed., p.* 1497), says: "The right of the Minister (be he Rector, Vicar, or perpetual Curate) to preside at a meeting of his parishioners seems to have been unquestioned law since the learned decision of Sir J. Nicholl in *Wilson* v. *M'Math*."—(See also *Baker* v. *Wood*, 1 *Curteis*, 507; *Blunt's* "*Book of Church Law*," *p.* 300.)

This right of the Rector to preside at all meetings of the Parish is recognized in the Statutes of some of the States, and in the Canons of most of the Dioceses, and will not, I think, be seriously questioned even in those Dioceses where that right is not distinctly affirmed by the Statute, or Canon Law.

The Canon or Statute Law in nearly all the Dioceses provides that in case there be no Rector, or if he be absent, then one of the Wardens shall preside. In

case both Wardens be present, and the law does not designate which one shall preside, the one called to the chair by a majority of the voices shall be the presiding officer of the meeting. In case no Warden be present, a Vestryman, or, in some Dioceses, a parishioner (presumably a legal voter), chosen by the meeting, shall preside. In some Dioceses the law directs that judges of the election shall be appointed. In Texas the congregation may name its own election managers, unless otherwise provided by parochial legislation. In the Diocese of Pittsburgh the form of by-laws recommended by the Diocesan Convention for adoption by the several Parishes provides that the Rector, with the Wardens, shall constitute the judges of election. In Montana, the presiding officer and two tellers, appointed at the meeting, act as judges of election, whose duty it is to decide all questions as to the qualification of voters. In Virginia, the Canons provide that the Vestry shall appoint three persons, of whom not more than two members shall be of their own body, to act as judges in conducting and superintending the annual elections. But in those Dioceses where the law makes no provision for the election or appointment of judges of election, the presiding officer has the right to appoint tellers to collect and count the votes ; he also has a general supervision of the election, and, in the absence of any law to the contrary, decides all questions as to qualifications of voters ; it is also his right to reject illegal votes when challenged. It has been decided that the presiding officer cannot on his own motion reject a vote. When a vote is offered, it must be received, unless challenged ; the vote having been received, the question is decided, and the

tellers cannot disregard the vote on the ground that it was illegal.—(*Hartt* v. *Harvey*, 32 *Barb.*, 55; *People* v. *White*, 11 *Abbott, Pr. Rep.* [*N. Y.*], 168.)

Unless otherwise provided, the presiding officer is also the returning officer, and enters the proceedings of the meeting, or causes it to be entered, in the record book of the Vestry.

The proceedings of the annual meeting, and of every special meeting of the Parish, should be entered on the records of the Vestry or in some other book provided for the purpose, even when not so required by law, in order that a record thereof may be preserved for future reference.

QUALIFICATIONS OF VOTERS.

The qualifications of voters at the annual Parish meetings are, with few exceptions, regulated by the Canons of the several Dioceses, and are so diverse as to render it impossible to give any general rule governing the question. Reference must always be had to the Canons of the Diocese, and in a few Dioceses to the Statute Law; in a few others the matter is left, in part, to the determination of the Parish itself.

In the five Dioceses in the State of New York, the qualifications of voters are defined by the Statute Law. In the State of Maryland, the "Vestry Act" also defines the qualifications of those who may vote for Vestrymen. It would be a work of unnecessary labor, without any corresponding advantage, to state in detail the various requirements of the several Dioceses necessary to constitute a legal voter in the Parishes therein situated. A consideration of certain of the

qualifications required in a majority of the Dioceses will be all that is necessary. In most of the Dioceses it is required that voters shall be baptized males of full age. A few Dioceses do not require that a person shall have been baptized, only that he shall be a male person of full age, while others require that the voter shall not only have been baptized, but that he shall also be a communicant.

In the Diocese of Lexington persons over the age of eighteen years, possessing certain other qualifications, are legal voters under its Canons. In some Dioceses, as in Maine, Indiana, and many of the Western Dioceses, the franchise is granted to females as well as to males, and in some cases the required age for females is fixed at eighteen.

It is also required in the majority of the Dioceses, that in order to become qualified to vote at a Parish meeting, a person must have been a regular or habitual attendant upon the public worship of the Church in that Parish for a certain period of time, and a regular contributor to the support of that Church, also for a definite period of time.

In disputed elections, there is usually more controversy over these two requirements for a qualified voter than any others, and they are, therefore, deserving of more careful consideration.

What constitutes a *regular* or *habitual attendant* at the public worship or services of the Church?

The standard dictionaries define the word "regular" as "steady or uniform in course, practice, or occurrence; not subject to unexplained or irrational variation; returning at stated intervals; orderly; methodical; periodical."

"Habitual" is defined as "according to or constituting a habit; customary; usual; regular."

Hence, habitual or regular attendance obviously means something more than an occasional or irregular attendance. The very term *habitual* or *regular* is used in the Statute or Canon expressly to characterize the nature of the attendance necessary to render a person possessing other required qualifications a qualified voter. An *habitual* or *regular* attendant upon the services of a Church is one who attends such services habitually, regularly, whose custom it is to be present at the said services; one who is more often present than absent.

It is certain that one who seldom attends the public worship of the Church, or who is irregular in such attendance, or who is more often absent than present at the public services of the Church, or at least at some one of such services, if there be more than one on a Sunday, cannot be called either an *habitual* or *regular* attendant upon the public worship of the Church, does not meet the plain and obvious requirements of the Statute or Canon, and is not a qualified voter.

The question was thoroughly examined and the rule well laid down by the Court in *People et al.* v. *Tuthill et al.* (31 *N. Y.*, 550). After discussing the question of what is meant by a *stated* attendant, the Court says: "The distinction between an attendant of that character, and one whose attendance is irregular and at uncertain periods, or occasional only, is plain and well understood. Indeed, it is too plain and obvious to be aided much by attempts at exact description or definition. Regular attendance at the stated times for worship, as

established in the Church, society, or congregation, as distinguishable from irregular or occasional attendance, is what is necessary. This attendance must be personal and cannot be supplied by another. The regular attendance of the wife, or other member of the family, will not answer. And no amount of contribution to the support of the Church or society can be accepted in lieu of this personal presence statedly."

The Court also said: "It is unnecessary to determine in this case how often a person must attend at the stated periods for worship in the course of the year to be a stated attendant. It is enough to say that persons who attend a few times only in the course of the year, as compared with the number of stated times for worship within such year, and at irregular and uncertain intervals, are clearly not stated attendants."

This rule would not necessarily apply to those who were prevented, by a long-continued sickness or an extended absence from the Parish, from attending the services of the Church. The rule applicable in civil elections would apply here, and depend on the intention of the person. If it was his intention to resume attendance on the services of the Church when recovered from his sickness, or on his return from his journey, his rights as a voter would doubtless remain unimpaired; but if there was no such intention, then his rights as a voter would be lost. Humphrey so states it as his opinion in his "*Law of the Church*" (*p.* 14).

The observations made concerning *regular attendants* will also apply to *regular contributors.* To be a regular contributor one must contribute, not occasionally nor at irregular intervals, but *regularly*, *habitually*,

and at *stated intervals*, and the contributions must be made in such a manner that their regularity may be determined upon by the proper officers of the Church. The depositing of money in the offertory basins on such Sundays as the person happened to be in Church would not probably be a sufficient compliance with the law requiring a regular contribution, unless the money thus contributed was so deposited that the amount and the name of the contributor could be afterwards determined. It is not sufficient that the contribution be promised or subscribed, it must be paid. A promise to contribute is clearly not a contribution until it is paid. If one should rent a pew or sitting in a Church, or subscribe a certain sum per week or month, he must have paid the amount of that pew rent or subscription then due and payable before the meeting, in order to be qualified to vote as a regular contributor. The Canons of the Diocese of Newark thus define one who is not a regular contributor: "No one shall be deemed a regular contributor . . . who is in arrears in the payment of any portion of his contribution that may be due and payable on or before the first day of that month in which said meeting is held."

In the case of *People, etc.*, v. *Tuthill, etc.*, above cited, the Court, in deciding in what manner a person must contribute to the support of a Church in order to render him a qualified voter, thus states: "He must contribute to its support according to the usages and customs thereof. This undoubtedly means substantial and vital aid and support. Personal attendance and countenance might in one sense contribute to the support of such an organization. But that is not the contribution intended by this provision of the Statute.

The Statute means the necessary material support, without which the organization cannot exercise its ordinary functions and perform its customary and appropriate duties and ministrations. It means the parting with, and contribution of, a portion of one's worldly substance in the usual and customary way, to be used in meeting and defraying the expenses incurred by the Church, congregation, or society in the support of public and divine worship. Merely attending as a worshipper, or taking a leading or a subordinate part in the exercises, or rendering some special gratuitous service, will not answer this requirement of the Statute. . . . In this view contributions made, not for the support and maintenance of the religious incorporation, but for the support or promotion of some other object or enterprise in which the Church, congregation, or society may be engaged, however valuable or praiseworthy, as Sunday-schools, missions and the like, will not be sufficient." The Court also held that one who acts as leader of a choir, or as sexton of the Church, without compensation, even though such service had been compensated for before, was not a legal voter, not having contributed to the support of the Church for the previous year according to any usage or custom thereof.

The contribution must also have been made for the full length of time required by the law. If, for instance, it is required that one must be a regular contributor for one year previous to the election, the fact that one had been a regular contributor for eleven months would not be sufficient to meet the requirements of the law.

It is manifestly the plain intention of the law in

prescribing certain qualifications for those who shall be allowed to choose the officers of the Church, to secure the government and control of the Church's temporalities to such of its adherents and supporters as shall manifest their attachment thereto, and interest in its material welfare, by their habitual attendance at its public services, and their habitual contributions to its support. For, as the Court remarked in the case above cited, it is plain that upon no other principle or policy could the Church, depending as it does upon mere voluntary contributions for its maintenance and support, be permanently kept up, its existence continued, and its usefulness maintained.

QUALIFICATIONS OF WARDENS AND VESTRYMEN.

First. The Qualifications of Wardens. Only communicants should ever be chosen as Wardens of a Church. Happily, in most of the States and Dioceses it is required by Statute or Canon that a person must be a communicant of the Church to render him eligible for the office of Warden, and it is to be hoped that the very few Dioceses that do not so require will soon amend their Canon Law, or secure the amendment of the Statute Law, if that be necessary, so that it shall be an universal requirement in every Diocese that to be a Church Warden a man must be a communicant. Certainly the Church never intended that her Wardens should not be of her communicating members. Even if the law of the State or of the Diocese does not require the Wardens to be communicants, yet true Churchmen in every Parish should see to it that only communicants are elected as Wardens of the Church.

While in most of the Dioceses the qualified voters

of the Parish elect the Wardens at the annual Parish meeting, in several Dioceses the law provides that the Rector shall appoint a member of the Vestry as Senior Warden, and the Vestry elect one of their number as Junior Warden. In the Dioceses of North and East Carolina the Rector nominates the Senior Warden, and the Vestry elect both Wardens from among their own number. In a few Dioceses, as in the Virginia and Kentucky Dioceses, the Vestry elect both Wardens from their own body.

Second. Qualifications of Vestrymen. While the qualifications requisite in the different Dioceses for the office of Vestrymen are as variant as are the qualifications for voters, it may be stated as a general rule that only a qualified voter is eligible for the office of Vestryman.—(*Willcock on Corp*, *Part* I., *sec.* 480.)

In most of the Dioceses the only required qualification is that he shall be a male voter. In New York State the law requires that a Vestryman must be a qualified voter and have been baptized. In Vermont it is required that he shall be a communicant, while in the Diocese of Massachusetts the Canon merely says that he shall be a baptized man.

In a few Dioceses the Canon directs that only communicants shall be chosen as Vestrymen, provided there be a sufficient number of male communicants in the Parish.

While but comparatively few Dioceses as yet require that Vestrymen shall be communicants, it is the growing mind of the Church that all her officers should be chosen from among her communicating members; certainly, in those Parishes where there are a sufficient number of well-qualified male communicants, only to

those who have evidenced their loyalty and attachment to her doctrine, discipline and worship, and their obedience to her lawful authority by being confirmed, should be permitted the government and control of her temporalities.

In Maryland, the "Vestry Act" provides that Vestrymen shall take and subscribe an oath of support, fidelity and faithful performance of the office. The provision of the Act is as follows:

"VI. *And be it enacted*, That every person chosen as a Vestryman shall, before he acts as such, take and subscribe the oath of support and fidelity required by the Constitution and form of government, unless such person hath before taken such oath, and also make and subscribe a declaration of his belief in the Christian religion, and he shall also take and subscribe the following oath of office, to wit: 'I, A. B., do solemnly swear that I will faithfully execute the office of a Vestryman of ——— Parish, in ——— County, without prejudice, favor, or affection, according to the best of my skill and knowledge'; which oaths and declarations any Justice of the Peace, or any Vestryman present may administer and take."

This oath, which usually is placed at the head of the Parish Register, each Vestryman is required to sign on his election.

In the Virginia Dioceses every person chosen a Vestryman is required, before he can act as such, to subscribe the following declaration and promise: "I do believe the Holy Scriptures of the Old and New Testament to be the Word of God, and to contain all things necessary to salvation; and I do yield my hearty assent and approbation to the doctrines, worship and

discipline of the Protestant Episcopal Church in these United States; and I promise that I will faithfully execute the office of Vestryman of ——— Parish (or Church), in ——— County, according to my best knowledge and skill."

Unless the law expressly provides otherwise, a *majority* of all the votes cast is necessary for an election. A mere plurality, if it be not such a majority, is insufficient, and fails to elect to the office of Warden or Vestryman.—(*Angel & Ames on Corp., sec.* 127; *Morawetz on Corp., sec.* 354; *People* v. *Phillips*, 1 *Dem.* [*N. Y.*], 388; *People* v. *Devin*, 17 *Ill.*, 84, 17, *A. & E., Ency. of Law, p.* 47, and cases therein cited.)

CERTIFICATE OF ELECTION.

In a few Dioceses a certificate of election of Wardens and Vestrymen is required to be made. In New York State the Statute requires that the presiding officer of an annual election shall enter the proceedings of the meeting in the record book of the Vestry, sign his name thereto, and offer the same to as many of the qualified voters present as he shall deem sufficient, to be also signed by them. While the law requires no certain number of qualified voters so to sign, two such voters, besides the presiding officer, would probably be sufficient.

In Indiana the law provides that the clerk and teller of the annual meeting shall file a certificate of election with the County Recorder within ten days after the election.

In the Diocese of California it is required that the Rector, or, in his absence, the Wardens, shall, within one week after the election, forward to the Bishop,

through the Secretary of the Convention, the names of the Wardens, Vestrymen, Treasurer and Clerk chosen at such meeting. (For forms of certificates see *Appendix C.*)

In every Parish, even where the law does not so require, a record of the proceedings of the meeting, with the names of the Wardens and Vestrymen elected thereat, and that they each received a majority of the votes cast at said election, should be entered in the minute book of the Vestry, signed by the presiding officer of the meeting and attested by the Secretary thereof, although the signature of the Secretary of the meeting would probably be sufficient in all cases not otherwise provided for by the Statute or Canon.

In many Dioceses, the annual meeting also elects the required number of delegates to the Diocesan Convention, and, in some cases, the same number of alternate delegates. As the qualifications of such delegates are fully provided for in the Constitution and Canons of the various Dioceses, they need not be particularly noted here.

In some Dioceses the law provides that these delegates shall be elected by the Vestry. A certificate of such election must be sent to the Secretary of the Convention, signed by the Rector, or, if there be no Rector, or he be absent, by one or both of the Wardens, or by the Secretary of the Vestry, as the law may direct. (For forms of such certificates see *Appendix D.*)

SPECIAL PARISH MEETINGS.

Special Parish meetings will seldom be found necessary, and in some Dioceses, I apprehend such meetings will never be necessary for legal purposes. The Ves-

try, and not the parishioners, are the managing officers of the corporation, and have the control of its temporalities.

In some Dioceses a special Parish meeting must be called to fill any vacancy that may occur in the Vestry, although the Canons of most of the Dioceses now provide that the remaining members of a Vestry may fill all vacancies in their own body, until the next annual election.

In a majority of the Dioceses the consent of the members of the Parish is made necessary by the Statute or Canon Law, to the alienation or encumbering of the real property of the corporation.

This consent can only be obtained at a meeting of the parishioners duly called for that purpose. With few exceptions, this consent would be legal if given at the annual meeting, provided the call for the meeting clearly specified that such consent would then be asked for. In a few Dioceses the law provides that a special meeting shall be called for that purpose. In such cases it would certainly be wiser to conform strictly to the language of the Statute, and call a special Parish meeting. The consent of the parishioners is, in most of the Dioceses, made necessary to any change in the number of Vestrymen, but the calling of a special Parish meeting for this purpose is obviously unnecessary, unless the Statute or Canon Law clearly so requires. In a few Dioceses a special meeting of the Parish is made necessary by the Canon Law, to elect delegates to any special Convention of the Diocese, but in the absence of any Canon or Statute Law so requiring, no special meeting of the Parish need be called to elect delegates to any such Diocesan Convention or Council, as the

delegates duly elected to represent such Parish at the preceding or succeeding Annual Convention or Council of the Diocese will be legally competent to represent the Parish, as its accredited delegates, in any Special Convention or Council of the Diocese.

Notice of a special Parish meeting must be given as the Canon or Statute Law directs, usually in the same form and manner as for annual meetings; but an even more strict compliance with the letter of the law is required for special than for annual meetings. The notice must state clearly and explicitly the purpose of the meeting, and only such matters can legally come before the meeting as are stated in the notice. The rule that a notice calling a special meeting must state particularly the objects of such meeting, is amply supported by the authorities.—(*St. Stephen's Church Cases*, 25 *Abb. N. C.*, 230; *Angell and Ames on Corp.*, *sec.* 489; *Thompson on Corp.*, *sec.* 717.)

The meeting must be conducted in the same manner as the annual meeting, and is subject to the same regulations concerning the qualifications of voters, and the filing of a certificate when so required.

CHANGE OF NAME.

In the absence of any express provision of the law to the contrary, a change in the name of the corporation can only be made by a majority (in some cases, two-thirds) of the members of the Parish. Where the law does not direct otherwise, the proper course, in case a change of name was deemed desirable, would be for the Vestry to first adopt a resolution in favor of such change, and then, at the next annual meeting of the Parish, or at a special meeting duly called for that

purpose, which in some cases is required, submit the said resolution to the qualified voters of the Parish for their consideration and approval. If the change of name be adopted at such meeting, in accordance with the requirements of the law, a certificate of such action, duly verified as the law directs, must be filed with the proper officer; upon the filing of such certificate the change is completed, and the corporation thereafter shall be known by the name so chosen and set forth in the certificate. In several States, as in New York, when a change in the name of the corporation is desired, application must be made to the Supreme Court, or to the Court designated for that purpose. The application or petition should set forth the name of the corporation, and the fact of its being duly incorporated under the laws of the State; the reasons for desiring a change of name, or facts showing the inconvenience of the corporate name; that the petitioner or petitioners were duly authorized to make such application by the majority, or two-thirds majority, as the law may require, of the corporators (or parishioners); concluding with a prayer that the corporation may be permitted to assume the corporate name, as before determined upon. This petition must be properly verified as the law directs.

The Court may thereupon issue an order, granting the proposed change, and directing that it be duly published, if the law so requires, and filed, together with the petition, affidavit, and proof of publication, with the officer designated for that purpose. The due filing of these papers completes the change of the corporate name.

CHAPTER III.

OF THE VESTRY.

THE MODERN Vestry system, as we have it here in America, was unknown to the Church in primitive times. There were congregations of believers, there were Sacraments, there were Bishops, Priests, and Deacons, but there were no Vestries. Many believe the Vestry system of the American Church to be a providential creation, and the most efficient of all parochial systems. However the modern Vestry system may be regarded, nobody expects, and few, I apprehend, desire to see it done away with. It has become a part of the American Church organization, and is now generally necessary to the fullest development of Church life in an American Parish, and is therefore to be respected and utilized.

At the present day, with few exceptions, our Parishes are organized as corporations under the name of Rector, Wardens (or Church Wardens) and Vestrymen. The very name shows that the corporation is made up of three separate and distinct component parts, the Rector, the Wardens, and the Vestrymen, each part being necessary to its corporate life. These three component and integral parts constitute the Vestry of a Church, corresponding to the select Vestry of the Church of England, and representing the whole body of the parishioners.

While in one or two Dioceses the name Vestry is given to the Vestrymen, and the corporation is de-

nominated "The Rector, Wardens and Vestry," the word "Vestry" in this work, will be used in its true sense, as meaning the corporation, "the Rector, Wardens and Vestrymen" of a Parish. When the Rectorship of a Parish is vacant, then the Wardens and Vestrymen, with certain restrictions as hereinafter noted, constitute the Vestry.

The Vestry are the corporate Trustees of the Church, and to them the law confides the management and control of its temporalities.

POWERS OF A VESTRY.

It is a well settled principle of law, that a corporation created by Statute possesses only such powers as are conferred upon it by the Statute, either expressly or as incidental to its very existence. In order that a corporation may derive a power by implication, it must appear that the power thus sought to be implied is so necessary to the enjoyment of some specially granted right, that without it the right would fail.—(*Sedgwick on Con. of Stat. Law, p.* 292; *Smith* v. *Moffat*, 1 *Barb.*, 65; *Gaines* v. *Coates*, 51 *Miss.*, 335; *Thompson* v. *Weller*, 85 *Ill.*, 197; *P. R. R. Co.* v. *Canal Com.'s*, 21 *Penn*, 9.)

It is also a well recognized rule that charters of all corporations are grants of power to exercise certain rights as specified in such charters, and are to be construed strictly.—(*Sedgwick on Con. Stat. Law, pp.* 267, 295; *Robertson et al.* v. *Bullions et al.*, 11 *N. Y.*, 243.)

In *Salem Mill Dam Corp.* v. *Ropes* (6 *Pick.* [*Mass.*], 23), the Court held: "The power of corporations is derived only from the act, grant, charter or patent by which they are created. In this Commonwealth, the source and origin of such power is the Legislature,

and corporations are to exercise no authority, except what is given by express terms or by necessary implication by that body."

A Vestry being a corporate body, its powers are special powers, granted by Statute, and the Statute conferring them must be strictly construed. The powers so granted cannot be exercised for any collateral purpose.—(*Dartmouth College* v. *Woodward*, 4 *Wheat.*, 518; *Diligent Fire Co.* v. *Commonwealth*, 75 *Pa. St., Rep.* 291; *Heiskell* v. *Mayor, etc.*, 65 *Md.*, 125.)

A Vestry cannot bind the Parish by any action of theirs, beyond the express powers granted them by the Act of Incorporation, or the Church Charter, or the Canons of the Church.—(*Miller* v. *Church*, 4 *Phil.* 48; *Bailey* v. *M. E. Church, etc.*, 71 *Me.*, 472.)

It must also be remembered that such powers relate only to the temporal affairs of the Parish, and touch not the spiritual, which are under the exclusive control and direction of the Rector, in subordination to the Ecclesiastical Authority of the Diocese.

The powers of a Vestry may thus be enumerated:

First. They are the Trustees, and have the custody and administration of all the corporate property and temporalities, real and personal, of the Parish, and the revenues therefrom, as specified by Statute or Canon Law, or by the Church Charter.

Second. To erect Church edifices, Rectories, Parish Houses, and other buildings for the use of the Parish and to alter and repair the same when necessary.

Third. To regulate and order the renting of pews, and to dispose of all moneys accruing therefrom, and all other moneys received by them, excepting the canonical collections, as may be for the best interests of the Church.

Fourth. To make by-laws for the orderly management of the temporal affairs of the Parish, provided they be conformable and subordinate to the laws of the State, and the Constitution and Canons of the Church; to appoint a Secretary, a Treasurer and such other officers of the corporation as they may deem necessary; and to make, have, and use, a common seal and to alter the same at pleasure.

Fifth. To elect conformably to the Canons of the Church, and the Statutes of the State, a Rector to fill a vacancy, whenever occurring, in the Rectorship of the Parish, and to fix the amount of his salary or compensation; also to request the Bishop to have him instituted as Rector, if he be so disposed and that office be used in the Diocese.

While in a few States and Dioceses, these powers, as enumerated, are somewhat modified by the specific provisions of the Statute or Canon Law, or the Church charter, they will, I believe, be found to represent fairly the varied powers conferred upon Vestries by the law in the majority of the Dioceses.

In every State and Diocese it will be found that the Statute Law and the Canons culminate in the one idea of making the Vestry the legal custodians of the temporalities of the Parish.

The duties of a Vestry are well set forth in the "Report of the Joint Committee on the Functions of Rectors, Wardens and Vestrymen" to the General Convention of 1880. To their Report they appended a proposed Canon, of which the following is a part: "It is the duty of the Vestry to secure to the Rector and Assistant Minister a proper maintenance and support, regarding it as a most sacred duty, and as a claim of

prior obligation and force, in order that they may be free to perform the duties of their sacred calling; to see that the property of the Parish is cared for and administered in accordance with the Canons, Laws, and customs of the Church; that the Church buildings and Parsonage are kept in repair; that the Parish revenues are properly expended; and to elect the Rector and other Ministers as provided by this Canon."—(*Journal Gen. Con.*, 1880, *p.* 468.)

The Wardens and Vestrymen, as the representatives of the laity, should ever seek to represent "the best intelligence, the most loyal Churchmanship, and the most earnest piety of the Parish in matters temporal and spiritual." They are ever to remember that the temporal matters confided to them pertain to the Church of Christ, and that "their trusteeship has a spiritual bearing and should work in and with, and be in subservience to, the great object of parochial organization, viz., the ingathering of souls into the fold of Christ."

CUSTODY OF THE REAL ESTATE OF THE CORPORATION.

The law vests the title to the real estate of the corporation in the Rector, Wardens and Vestrymen, as Trustees, collectively, for all corporate purposes. It also confides to them the custody and management of such property, and gives them power, under certain restrictions, to sell, mortgage, and lease the same. They may also take, by gift or purchase, other real estate, and improve the same for the use and benefit of the Church. The amount in value of the property, aside from that used exclusively for religious purposes,

which they may hold, is, in several States, limited by law. In New York they may hold property not exceeding in value $2,000,000, and whose yearly income does not exceed $100,000. In New Jersey, the amount is limited to a yearly income not exceeding $2,000, but provision is made that if the corporation desires to have and enjoy a larger amount than that to which it is limited by the act of incorporation, they may, by a majority vote, adopt a resolution declaring such desire and stating the amount to which it is to be increased. This resolution, certified and authenticated under the common seal of the corporation and duly verified by the oath of the Secretary thereof, must then be filed in the office of the Secretary of State, and upon the filing thereof the corporation may then have, hold and enjoy any real or personal property for the use and benefit of said corporation not exceeding the increased amount named in the resolution so filed. In the majority of the States the law places no limitation on the amount in value of the property that the corporation may hold.

In Michigan, where there is no such restriction, the law provides that the Vestry shall not hold or use any real estate not reasonably necessary for a Church building, Chapel, lecture and school rooms, and for dwellings for the Ministers thereof, for a longer period than ten years.

In most of the States the law places some restrictions upon the power of the Vestry to sell, mortgage or lease the real estate of the corporation. In some States, as in New York, the Vestry may not sell any of the real property of the corporation without first applying to and obtaining permission of the Court therefor. In the

majority of the States the consent of the members of the Parish must first be obtained at a meeting duly called for that purpose, before the Vestry may legally alienate or encumber any of the real property of the corporation. The consent of the Bishop and Standing Committee to the alienation and encumbering of the real estate of the corporation is most wisely provided for by Statute Law in some States. But if the rectorship of the Parish be vacant, then, as will be shown hereafter, the consent of the Bishop is necessary to such alienation in the absence of any Statute Law to the contrary.

Although the Canons of the Church require the consent of the Bishop and the Standing Committee to the alienation of the real property of the corporation, the Courts have decided that, to have any legal effect, it must also be a provision of the Statute Law. "Titles to property must be determined by the laws of the State."—(*Sohier* v. *Trinity Church*, 109 *Mass.*, 1.)

All proceedings affecting the title to the property of the Church must be taken in the corporate name, viz., "The Rector, Wardens (or Church Wardens) and Vestrymen of ——— Church," etc.

In some States it has been decided that the Vestry may institute proceedings to sell the property of the Church without consulting the members of the Parish. —(*Church* v. *Church*, 46 *N. Y.*, 131.)

In the case of *Mason* v. *Muncaster et al.* (9 *Wheat.*, 445), involving the question as to the right of the parishioners of the whole Parish to be made parties to a bill to dispose of certain property of the Parish, as being *cestuis que trust* of that property, the Supreme Court of the United States decided that "in an ac-

curate and legal sense, the parishioners are not the *cestuis que trust*, for they have individually no right or title to the property. It is the property of the Parish in its corporate or aggregate capacity, to be applied and disposed of for parochial purposes under the authority of the Vestry, who are its legal agents and representatives." While the decisions of many of the State Courts would seem to indicate, by implication, a different opinion, referring to the parishioners as *cestuis que trust*, without formally deciding them to be such, yet I apprehend that the decision of the Supreme Court in the above case, that the members of a Parish are not, in an accurate and legal sense, the *cestuis que trust* of the Church property, is strictly correct, their interest in such property being only a corporate, and not an individual interest, the property being managed and applied for the benefit of the corporation, and not for the members thereof as individuals.

The mode, extent and circumstances under which such property is to be applied is wholly within the discretion of the Vestry in their corporate capacity, but they cannot divert such property to any other purpose than the maintenance of the Church's worship and the propagation of her doctrines as defined and set forth in her Book of Common Prayer, nor sever their connection with the Church and unite with any other religious body without impairing their title to the property of the Parish by them holden in trust therefor.—(*Jones* v. *Wadsworth*, 11 *Phila. Rep.*, 227; *Isham* v. *Trustees, etc.*, 63 *How. Pr.*, 465; *Watson* v. *Jones*, 13 *Wall.*, 679.)

(For forms relating to the transfer of real property, see *Appendix E.*)

CORPORATE CAPACITY.

It is a well established principle of law that Vestrymen have no official powers as such, save when assembled in a Vestry meeting duly called.

They have no individual authority to bind the corporation, although the majority of them, or even the whole number, acting singly and not collectively as a corporate body, should assent to some particular transaction.—(*People's Bank* v. *St. Anthony's Church*, 109 *N. Y.*, 512.)

The rule was well stated by the Supreme Court of Pennsylvania in a recent case, involving the legality of a resolution purporting to have been passed by the Vestry of a Church and signed by a majority of the Vestrymen, but which, in fact, was adopted at a meeting when less than a legal quorum attended, and afterwards signed by a Vestryman who was not present at the meeting. The Court held that the resolution was not binding on the corporation. "The Vestry of a Church as the representatives of a corporate body must meet in order to take official action. They cannot act singly upon the streets, or wherever they may be found. This is because they are required to be deliberate. It is the right of the minority to meet the majority, and, by discussion and deliberation, to bring them over if possible to their own views."—(*Appeal of Ritenhouse*, 21 *At. Rep.*, 254. See also *United Brethren, etc.*, v. *Van Dusen*, 37 *Wis.*, 54; *Leonard* v. *Lent*, 43 *Wis.*, 83; *St. Patrick's Church* v. *Gavalon*, 82 *Ill.*, 170; *Constant* v. *Rector, etc.*, 4 *Daly*, 305; *Cammeyer* v. *The Churches*, 2 *Sand. Ch. Rep.*, 186; 1 *Waterman on Corp.*, *sec.* 70; 1 *Morawetz on Corp.*, *sec.* 531.)

EXTENT OF VESTRY'S POWER OVER THE CHURCH BUILDINGS.

The church edifice is held in trust by the Vestry for religious purposes only, and they have the custody thereof under the Rector.—(*Burn's "Ecc. Law," Vol.* I., *p.* 399.)

But the direction of its use belongs exclusively to the Rector, and access to it is entirely under his control. In the "Office of Institution," the keys of the church are delivered to the Rector as a token of the delivery of the church edifice itself, and the inference therefrom is conclusive that, *virtute officii*, the Rector has exclusive control of the church. The courts, both in England and in this country, have ever so held, and the rule may be stated as an universal one, that to the Rector alone, under the Bishop, belongs the absolute control of the use of the church edifice and access thereto.

As this question will be more fully considered and authorities cited, in the chapter relating to the Rector and his powers, further consideration of the question at this time is unnecessary. I will only quote the opinion of Judge Hoffman on this point.

"The Law of the Church at large, and especially the Law of the Church of England, the Common Law itself, vested the right over the church edifice and its employment in the Rector. The authority of Church Wardens was subordinate to his. When the Church avails itself of an act of incorporation, or other statute of the civil power, it is bound to take it in its true extent and meaning, but no further. The title, then, to the church, and all church property, is in the

trustees collectively, for all corporate purposes; but there is another class of purposes, purely Ecclesiastical, as to which the Statute did not mean to interfere or prescribe any rule. These are to be controlled by the Law of the Church. One conclusion seems, for example, deducible from these principles —that the control and possession of the church edifice upon Sundays, and at times when open for Divine services, appertains exclusively to the Rector. This, it seems to the author, is implied in his call, essential to his office, and must be paramount."—(*Hoffman's "Law of the Church," p.* 266.)

The same rule undoubtedly applies to Parish and Guild houses, and all other buildings, owned by the corporation, that are used for Ecclesiastical purposes. —(*Humphrey's "Law of the Church," p.* 34; *Lynd.* v. *Menzies et al.*, 33. *N. J. L. Rep.*, 162.)

To the Vestry belong the power to erect a church edifice and such other buildings as they may deem necessary for the best interests of the Parish, and to alter and repair those already erected. It is also their duty to see that the property of the corporation is kept in good order and well repaired.

By Canon 85 of the Canons of 1603, it was made the duty of the Church Wardens or questmen to see that the churches were kept well and sufficiently repaired; that the windows be well glazed, and the floors kept paved, and all things there in an orderly and decent sort, "as best becometh the House of God, and is prescribed in an homily to that effect. The like care they shall take that the churchyards be well and sufficiently repaired, fenced, and maintained, with walls, rails, or pales, as have been in each place accustomed,

at their charges unto whom by law the same appertaineth."

PEWS AND PEW-HOLDERS.

The Vestry have complete control over the pews, and may sell, rent, or declare them free to all worshippers, as they may deem for the best interests of the Church.

In churches where the pews are rented, it is the duty of the Vestry to fix the rental price of the pews, attend to the renting of the same and collect the rents thereof, or cause them to be collected under their direction.

It seems to be the better opinion that, in the absence of any express stipulation or agreement in the matter, a person renting a pew will be considered as renting it for that length of time for which bills for pew rents are made payable; as, for instance, if pew rents are made payable at the beginning or end of each month or quarter, the pew will be considered as rented by the month or quarter, as the case may be.

It is also the duty of the Vestry to attend to the seating of strangers and members of the congregation at times of Divine service.

The individual pew-holder has only the right of use and occupation of a pew when in attendance on the public services of the Church. The right of property in such pew belongs to the corporation.

If a pew be purchased it will require a deed to pass the title and vest it in the purchaser.—(*First Bap. Church* v. *Bigelow*, 16 *Wendell*, 28; *St. Paul's Church* v. *Ford et al.*, 34 *Barb.*, 16.)

The right of a pew-owner in a pew thus acquired by

deed is an incorporeal hereditament, and has some of the qualities of realty, but no such right attaches to a pew so acquired, as will prevent a sale of the church edifice.—(*Wheaton et al.* v. *Gates et al.*, 18 *N. Y. Rep.*, 395.)

A purchaser of a pew takes the same with presumptive knowledge of, and assent to, this condition.

"The question of remuneration or an equivalent right to a pew in a new church, if erected, must be left to subsequent adjustment."—(*Hoffman's* "*Law of the Church*," *p.* 257; *Heeney* v. *St. Peter's Church*, 2. *Edw. Ch. Rep.* 608; *Kellogg* v. *Dickinson*, 18 *Vt. Rep.* 266; *Daniel* v. *Wood*, 1 *Pick.*, 102.)

The owner of a pew may maintain an action of trespass against an intruder.—(*Shaw* v. *Beveridge*, 3 *Hill* 26.)

In a free church the Vestry have entire control of the pews, and may direct what pews shall be occupied by the different members of the congregation. They may also request any one to vacate any certain pew, and have the legal right to enforce the same.—(*Sheldon* v. *Vail*, 28 *Hun.*, 354.)

CUSTODY OF THE REVENUES OF THE CHURCH.

We have already seen that the title and the custody of the property of the corporation are exclusively in the Vestry, as trustees thereof.

The right to have, hold and use all the income, rents and profits, if any, of all such property is also in the same body.

To this rule there is, however, one exception. If a bequest has been made, appropriating the income thereof to the support of the Rector of the Parish, distinctly and exclusively, he has the right to such in-

come, unless by consent in writing he has qualified such right, or if when a Rector received a call to a Parish, the call explicitly reserved a certain sum out of such income for the support of services at a chapel, and such call be duly accepted in writing, he would undoubtedly be bound thereby —(*Hoffman's* "*Ecc. Law*," *p.* 83.)

To the Vestry also belongs the right of ordering the disbursement of all moneys received by them, except the canonical offerings, for the best interests of the Church. But, as has already been stated, they cannot divert any of such revenue to any other purpose than the maintenance of her worship as set forth and established in her Book of Common Prayer, the dissemination of her doctrine and teachings as contained in her authorized standards, and the furtherance of her spiritual and temporal interests.—(*Chase* v. *Cheney*, 58 *Ill.*, 509; *Nelson* v. *Benson*, 69 *Ill.*, 27; *Isham* v. *Fullager*, 14 *Abb. N. C.*, 363; *Deaderick* v. *Lampson* 11, *Heisk.* [*Tenn.*], 523.)

The courts will restrain any attempt by a Vestry to maintain a Rector or Minister who has been duly deposed by the proper authority.

Any member of the corporation may make application to the courts to restrain a Vestry from so diverting the revenues of the Church.—(*Church* v. *Bowden*, 14 *Abb. N. C.*, 356; *Isham* v. *Fullager*, *Idem*, 363.)

A Vestry may also enforce the payment of subscriptions made for religious purposes, when it can be shown that, relying upon such subscription, they have taken action involving the expenditure of money; also "whenever several persons subscribe upon a mutual reliance upon each other, each subscriber may be com-

pelled to pay what he promised."—(*Richey's "Churchman's Hand Book," p.* 38. See also *Underwood* v. *Waldron*, 12 *Mich. Rep.*, 73; *Comstock* v. *Howd*, 15 *Mich. Rep*, 237.)

With few minor exceptions, which will be noted later under the head of "Duties of Wardens," the Vestry alone have the power to contract debts that will render the property of the Parish legally liable for the payment thereof. The Rector has no power to incur liabilities binding upon the Vestry.

BY-LAWS.

While the laws of many of the States provide that Vestries may make such by-laws, or rules and orders for the management of the property and the regulation of the affairs of the Church, as they may deem necessary, the power to make by-laws or rules for the government of a corporation is incident to its creation, without any formal words conferring it.—(*In re Directors L. I. R. R.*, 19 *Wendall*, 37.)

Two important rules of law should, however, be noted in connection therewith: *First*, such by-laws must be necessary or convenient to the carrying out of the purposes of its creation; and *second*, they must be conformable and subordinate to, and not inconsistent with, the law of the land, the law of the Church, or the Charter of the Parish.— *Taylor* v. *Griswold*, 14 *N. J. L. Rep.*, 222; *Commonwealth* v. *Cain*, 5 *Serg. and Rawle* [*Pa. Rep*], 510.)

In *Vestry of St. Luke's Church* v. *Matthews* (4 *Desaus.*, 578), the Court declared that "a new by-law requiring a new qualification to entitle persons otherwise qualified to vote was therefore an attempt to

transcend the powers given and to alter the qualification of voters, and was a violation of the Charter."—(See also *McDermott* v. *Board of Police*, 5 *Abb. Pr. Rep.*, 422; *Brick Pres. Church* v. *Mayor, etc.*, 5 *Cowen*, 538; *People ex. rel.*, v. *Chicago Live Stock Exchange*, 48 *N. E. R.*, 1062; *Prickett* v. *Wells*, 117 *Mo. Rep.*, 502.)

ELECTION OF RECTOR.

It may be stated as a general rule, having but few exceptions, that to Vestries is given the power of electing the Rector of a Parish, and the fixing of his salary or compensation. They also have the power of electing a Secretary or Clerk, a Treasurer, and such other officers as they may deem necessary for the interests of the Corporation.

In only a few States have the members of the Parish any voice or vote in the matter. In the Diocese of Colorado, the Canons provide that, if the Vestry fail to fill a vacancy in the Rectorship of a Parish within three months, the Ecclesiastical Authority shall nominate to the Wardens a Priest to fill the same. Upon receiving the nomination, the Wardens shall call a meeting of the qualified voters of the Parish, and submit to them such nomination. If a majority of the votes shall be cast for the nominee, he shall be declared the Rector of the Parish. In case the nomination should be rejected, the Ecclesiastical Authority shall make a second, and, if necessary, a third nomination. Should this nomination be rejected, then the Bishop may appoint some Minister as *locum tenens*, to act until the next annual Council. It is also made the duty of the Parish to provide for the comfortable support of

such *locum tenens*, and to accord to him all the rights and powers of a Rector.

In the Diocese of Connecticut the Canons provide that the choice and salary of a Rector shall not be within control of the Vestry, unless by special vote of the Parish.

In the Diocese of Western Michigan the Canons provide that if, after the expiration of six months, the Vestry of any Church that has become vacant shall fail to call or settle a Minister, then it shall be the duty of the Bishop to appoint one, and he shall notify the Vestry of such appointment, and upon their concurrence, the Minister so appointed shall become the Rector of the Church.

In the Diocese of Fond du Lac the Canons provide that if the Vestry of a vacant Parish fail to fill the vacancy within three months, then "it shall be the duty of the Bishop to nominate at least three Clergymen for the Rectorship. If no election be made within three months subsequent to such nomination, the Bishop may appoint a Rector who shall have all the rights and powers of a Rector elected by the Vestry." In the Diocese of Springfield and a few other Dioceses, the consent of the Bishop is made necessary, before a Clergyman elected to the Rectorship of a Parish can become the Rector thereof.

In most of the States, the Statute Law gives to the Vestry of a Parish the power of electing the Rector thereof whenever a vacancy may occur.

Is this power of election absolute and exclusive of any and all Canon Law restricting or modifying that power? Has a Canon requiring the consent of the Bishop as a prerequisite to the election of a Clergyman

to the Rectorship of a Parish any legal force in a State where the Statute Law gives the power of such election to the Vestry of the Parish?

It is a question not wholly free from difficulties.

The statement of a few plain principles may help us somewhat in arriving at a correct conclusion in the matter. These principles, so plain as to seem like mere truisms, may be stated as follows:

First. The Church existed before Vestries.

Second. The three Orders of the Ministry were constituted before Vestries existed.

Third. The Church and her three-fold Ministry of Bishops, Priests and Deacons are Divine in their origin, perpetual in their existence, and essential to the Church's being.

Fourth. The Vestry is human in its origin, without Divine authority or obligation, and non-essential either to the Church's being or to the discharge of her holy offices.

Fifth. It is the Bishop, not the Vestry, who has the charge and government over the Rector, to whose godly judgments and admonitions he promised to submit, and whom he promised reverently to obey in the solemn moment of his ordination to his holy office.

The solemn vows of ordination are forever binding on every duly ordained Clergyman, and no Vestry by *calling* him to be their Rector can release him from his covenant vows and obligations; by becoming a Rector he does not thereby cease to be a Priest.

With this statement of certain fundamental principles, whose truth cannot well be impugned, let us now turn to a direct consideration of the question before

stated, viz.: Is the power given by law to a Vestry to call a Rector an exclusive power?

When a Church avails itself of an act of incorporation, or other statute of the civil power, it is of course bound to take that law in its true meaning and extent, but no further. The law creates the corporation for an express purpose, that of enabling the Church to more effectually carry on and promote her work, according to her own particular laws and principles; and the corporation so created cannot abrogate or disavow the laws and usages of the Church, without "violating the very essential principle that brought it into being." The laws and principles of the Church must, of very necessity, form the rule of conduct for such corporation, and in conformity to that rule must it exercise the powers given to it by the Statute Law. The courts are well agreed on this point.—(*Watson* v. *Jones*, 13 *Wall.*, 679; *Chase* v. *Cheney*, 58 *Ill.*, 509; *Pounder* v. *Ashe*, 44 *Neb.*, 672; *Christ Church* v. *Phillips*, 5 *Del. Ch. Rep.*, 429; *Livingston* v. *Rector, etc.*, 45 *N. J. L. Rep.*, 230; *Prickett* v. *Wells*, 117 *Mo.*, 502.)

The question next arises as to what are the *principles* of the Church in this matter.

To the principles of the Church of England we must look, if we would fully and clearly understand the principles of the American Church.

It cannot be doubted that in the earliest ages, when separate Dioceses were first established, with a Bishop in charge thereof, the power of legislation vested in him. "Originally, the Bishop, in his Diocese, was clothed with the ultimate and exclusive power of government, and that this involved all judicial and all legislative authority, seems to the author the only

doctrine consistent with the tenet of an Apostolic Episcopacy."—(*Hoffman's "Law of the Church," p.* 180.)

In England as early as the year 740, it was declared, "That Priests be neither constituted to any Churches, nor ejected from them, without the authority and consent of the Bishops."—("*Excerptions of Ecgbriht*" [23*d*], *Johnson's Laws, etc., Vol.* I.)

Bishop Beveridge well says: "I confess myself utterly ignorant why or in what manner a distinction should be drawn between an Apostolic and a Divine right; and since the Apostles transmitted the authority committed to them by Christ to the Bishops, their successors, there seems to us nothing more agreeable to reason, nothing more necessary, than that this jurisdiction of Bishops over Presbyters should be referred to a Divine institution."—(*Lib.* II., *Cap.* 1155–18, *De Episcopis.* Cited in *Hoffman's "Law of the Church," p.* 183.)

In *Bird* v. *Smith* (*Moore's Rep.*, 781), the Lord Chancellor and the two Chief Justices of England, with the Chief Baron, declared: "That at the Common Law, every Bishop in his Diocese, and the Archbishops in Convocations, could make Canons to bind the clergy within the limits of their jurisdiction."

While this power and authority of a Bishop has been greatly modified and limited, either by the consent of the Bishops themselves, or by the enactments of Councils of superior authority and to which the Bishops were a party, there can be no question that in the Church of England, from the beginning to the present time, the consent of the Bishop has been, and is, absolutely necessary, before a Clergyman can be constituted the Rector of a Parish. It is a well-known fact that

in the Church of England Vestries have little or no voice in the choice of a Rector. As originally all power and authority was given to the Bishops and by them exercised for centuries, that power and authority vests in them to-day, except where surrendered by them, or taken from them by legislative enactment, or by a legitimate conclusion from such enactment. Unless such evidence can be produced, "we have," as Judge Hoffman says ("*Law of the Church*," *p.* 181), "the Bishop's primitive jurisdiction to resort to for guidance and direction—a power without a shadow of claim to infallibility, but with an absolute claim to obedience." It will not, I think, be contended by any one, that the Church of England, or the Church in America, has ever by any legislative enactment deprived the Bishop of a Diocese of his right to require that his consent shall first be obtained, before a Minister elected by the Vestry of a Parish shall become the Rector thereof.

It is a principle of the Church of England that the Bishop is the source of authority within his Diocese, and therefore a principle of the Church in America, unless that principle has been expressly controverted or denied by some enactment to the contrary.

But the Church, so far from denying it, has distinctly recognized and affirmed, in the "Office of Institution," as adopted and set forth in her Book of Common Prayer, the principle of the Mother Church as her own principle, that the Bishop is the source of authority in his Diocese, and that his permission is necessary before a Rector of a Parish can act as such within it.

Among the strong words used by the Bishop in this "Office of Institution" are these: "We do by these

presents give and grant unto you, . . . our License and Authority to perform the office of a Priest in the Parish (*or* Church)," etc. "And also hereby do institute you into said Parish, possessed of full power to perform every Act of sacerdotal Function among the People of the same; you . . . complying with the rubrics and canons of the Church, and with such lawful directions as you shall at any time receive from us." And again: "We authorize you to claim and enjoy all the accustomed temporalities appertaining to your cure," etc. In the Letter of Institution, the Rector is charged by the Bishop to bear in mind that he is accountable to the Ecclesiastical Authority here, "and to the Chief Bishop and Sovereign Judge of all, hereafter."

Truly, it is with no uncertain voice that the Church declares her adherence to, and affirmation of, the Catholic principle that the source of Diocesan authority is in the Bishop, and that his consent is necessary before a Clergyman can act as Rector of a Parish within his Diocese.

It may be said that while this was the law once, it is not the law to-day, because it is not now uniformly enforced nor obeyed, nor the use of this particular Office of Institution now obligatory. That fact makes not the slightest difference. A law is a *law*, whether it be enforced or not, or whether it be obeyed or not, and the principle contained in that law is no less true because the law itself is not obeyed nor enforced.

It is, therefore, in my judgment, manifestly the Law of the American Church to-day, first, that the Bishop is the source of authority within his Diocese, and second, that the Bishop's consent to the election of a Clergyman to

the Rectorship of a Parish within his Diocese, before such Clergyman can act as such Rector, is necessary.

It has already been shown that the courts have uniformly held that a religious corporation must exercise the powers given to it by the Statute Law, in conformity with, and subservient to, the Ecclesiastical laws and principles of the Church with which it is connected, and of which it forms a part. It is plain, therefore, under these decisions of the courts, that the power of electing a Rector, given by the Statute Law to a Vestry, is *not* an exclusive power, but a power to be exercised in accordance with, and conformity to, the laws and principles of the Church. If this be true, and it is not easy to see how it can be successfully controverted, then has the Church the right and the power to enact Canons, making necessary the consent of the Bishop, before a Clergyman elected to the Rectorship of a Parish can legally become the Rector thereof. As a further evidence that the power of election by a Vestry is not an exclusive power, it may be stated as an unquestioned fact that a Vestry cannot elect any person they may choose to the Rectorship of a Parish; they must elect a Minister of the Church, and one who is possessed of the necessary qualifications, and those qualifications are confessedly to be determined by the Ecclesiastical Authority of the Diocese, according to the laws and principles of the Church. This restriction on the power of Vestries to elect a Rector is obviously implied in the Statute Law granting them the power of election, and would alone be sufficient to prove that the power referred to is not an absolute and exclusive power, and also that such power must be exer-

cised in accordance with, and in conformity to, the laws and principles of the Church. The right of a Rector to his office is determined not by the Civil Law, but by the Canons and discipline of the Church, and the Civil Law will not shield him from the consequences of broken vows, or improper administration, nor make him superior to the authority of the Bishop, or to the laws and discipline of the Church and its tribunals. If he be deposed, or the pastoral tie be dissolved by the Bishop, his Rectorship ceases. The pastoral relation is controlled by the Ecclesiastical Authority, and the fact of the dissolution of it by such Authority in accordance with the discipline of the Church, is conclusive upon the civil courts.—(*Jennings* v. *Scarborough et al.*, 56 *N. J. L. Rep.*, 401; *Livingston* v. *Rector*, 45 *N. J. L. Rep.*, 230; *Walker* v. *Wainwright*, 16 *Barb.*, 486; *Shannon et al.* v. *Frost et al.*, 3 *B. Monr.*, 253; *Kuns* v. *Robertson*, 154 *Ill.*, 394; *East Norway Lake Church et al.* v. *Halvorson*, 42 *Minn.*, 503; *Stack* v. *O'Hara*, 98 *Pa.*, 213; *Gaff et al.* v. *Greer et al.*, 88 *Ind.*, 122; *O'Donovan* v. *Chatard*, 97 *Ind.*, 421; *Baxter* v. *McDonnell*, 155 *N. Y.*, 83.)

In *Pounder* v. *Ashe* (44 *Neb.*, 672) it was held that "the Church should be free from the interference of the courts when there is nothing drawn into question but the jurisdiction of the Church over one of its members, or ministers, or officers." The same principle was held in *Christ Church* v. *Phillips* (5 *Del. Ch. Rep.*, 429). The Court declared that "it possessed no power to dictate Ecclesiastical Law, or to decide questions arising thereunder; nor has it the power or the disposition to invade the legitimate domain of the Church, nor does it possess authority in any manner to amend

or abrogate the laws or canons thereof. It will not attempt to administer its discipline, or to determine Church relations, either of Bishops, Ministers, or members."

In *Hennesy* v. *Walsh* (15 *Am. Law Reg.*, 264) there is a note containing a careful review of the decisions on this point, and the rule is well laid down, as follows: "To this extent the cases all agree, that it must be the unlawful infringement of some personal right, of pecuniary value, and of a character redressible in the civil courts, in order to justify their interference in matters professedly of Ecclesiastical cognizance."

In *Chase et al.* v. *Cheney* (58 *Ill.*, 509) the Court held that "freedom of religious profession and worship cannot be maintained, if the civil courts trench upon the domain of the Church, construe its Canons and rules, dictate its discipline, and regulate its trials."

The larger portion of the Christian world has always recognized the truth of the declaration, "A Church without discipline must become, if not already, a Church without religion." If it be true, then, that the Church has authority and power to enact laws for the government of her Clergy and for the regulation and management of her affairs, temporal as well as spiritual, and that the Bishop of a Diocese has the power to dissolve the relation of a Rector to his Parish, acting in accordance with, and in conformity to, the laws and principles of the Church, it is hard to see how it can well be denied that the Bishop has also the authority to require that his consent be first obtained before a Minister of the Church can assume the office of Rector of a Parish in his Diocese, or that the Church possesses the power to enact laws, requiring the Vestry of a

Parish first to obtain the consent of the Bishop of the Diocese before receiving as Rector the Minister whom they may have elected as such.

After a careful review of the long line of decisions by the courts on Ecclesiastical questions and matters, I am firmly of the opinion that the mere power given by the Statute Law to Vestries to elect a Rector is not an absolute nor an exclusive power, but a power to be exercised subject to the laws and principles of the Church.

That the courts would so hold is, in my judgment, clearly to be implied from their decisions on analogous questions.

It would be well, in order to prevent any question in the matter, for the General Convention to enact a Canon declaratory of this true Catholic principle, and requiring that before the election of a Rector by a Vestry shall be complete, the written consent of the Bishop to such election must first be procured. That the General Convention has the power to enact such a Canon, I believe to be beyond doubt, and that the courts would recognize its validity, and decide it not to be in conflict with Statute Laws giving a Vestry power to elect a Rector, is, in my mind, equally clear. This question was practically decided in the case of *The Rector et al. of St. James' Church* v. *Huntington* (82 *Hun*, 125), in which the Court held that the Canon which requires a Minister to obtain a certificate of transfer from the Bishop of the Diocese before he can officiate as Rector of a Parish in such Diocese, and the Canon authorizing the Bishop to inhibit a Minister from so officiating without such certificate of transfer, were not in conflict with the Statute giving Wardens and Vestrymen

power to elect and call a Rector, etc., and that such power of election and calling was not absolute.—(See also *People ex rel. Peck* v. *Conley et al.*, 42 *Hun*, 98.)

The election of a Rector being the most important act within the province of a Vestry or Parish, it should be made by a written resolution explicitly stating the amount of his stipend, and when it shall be payable. In most of the Dioceses a majority of votes is sufficient to elect. In a few States, as in New Jersey, the law requires a two-thirds vote to elect. The Secretary or Clerk of the Vestry should be authorized to transmit a copy of the resolution to the Rector-elect. This resolution is the call, and, if accepted, becomes a legal contract, and the salary accruing under it is a debt recoverable in law. While the Vestry have power to elect a Rector, they have no power to remove him; the contract is for life and is determinable only by mutual consent, or by the lawful authority, duly exercised, of the Bishop of the Diocese.—(*Sheldon* v. *Parish, etc.*, 41 *Mass.*, 281; *Youngs* v. *Ransom*, 31 *Barb. Rep.*, 49.)

Nor can the Vestry indirectly remove him by a reduction of his salary. The right to the salary stipulated in the call is a valuable property right secured to the Rector by contract.—(*Bird* v. *St. Mark's Church, etc.*, 62 *Iowa*, 567; *Worrel* v. *First Pres. Church*, 8 *C. E. Green*, 96.)

ORGANIST AND CHOIR.

The English Ecclesiastical Law gives to the Rector, with the consent of the Ordinary, the employment of the organist and members of the choir; but if any expense is incurred, there must be a rate levied at a Ves-

try meeting of the parishioners. The control of the organist is with the Minister.—(*Burn's "Ecc. Law," Vol.* I., 374, *a*, *b*; *Dale's "Clergyman's Legal Handbook,"* 92.)

It is also the Law of the American Church. *The present Canon* (*Canon* 45 *of the Digest*) is obviously a direct incorporation of the principles of the English Ecclesiastical Law on the subject, and gives the exclusive control of the music of the Church and the employment of the organist and members of the choir, to the Rector.

Its language is plain and explicit regarding the Rector's right of employment: "It shall be the duty of every Minister, . . . with such assistance as he may see fit to employ from persons skilled in music," etc. This Canon was first enacted by the General Convention in 1874, not for the purpose of *imparting* authority to the Clergy, but to make it *mandatory* upon them to use their prerogative. It directs that the Minister, not the Vestry, *shall* "give order" concerning the music of the Church, and if *he* sees fit, he—not the Vestry—may *employ* persons "skilled in music."

The only fair interpretation of the Canon certainly gives to the Rector the power to employ or appoint the organist and members of the choir. But even if it be argued that the language of the Canon is not clear on this point, and therefore capable of a different interpretation, it will not support the contention that the Vestry has the power of employing or appointing the organist and members of the choir. For, in the absence of any Canon of the American Church on a question relating to the discipline of the Church, the English Ecclesiastical Law governs, and that Law, as has

been shown, explicitly gives the employment of an organist and members of the choir to the Rector.

But should it be contended that the Church *has* a Canon on the question, only the Canon is indeterminate, it may be said in reply, that the courts have uniformly acted upon the principle, and in many cases have expressly so decided, that when the American Canon Law is indeterminate on any question arising between a Rector and his Vestry relative to their respective rights, then the English Ecclesiastical Law must be resorted to for the correct interpretation of such Canon, and the determining of what is the Ecclesiastical Law governing the Church.

Interpreted in the light of the English Ecclesiastical Law, the Canon would clearly give the right of the employment in question to the Rector.

Again, it is a well-settled principle of law that when a statute (and a Canon is an Ecclesiastical Statute) can be construed either in harmony or in conflict with the purpose for which the statute was enacted, only that construction will be sustained which harmonizes with and upholds the purpose sought to be obtained by its enactment. Under this principle, the courts would unquestionably construe the words of the Canon, "It shall be the duty of every Minister, . . . with such assistance as he may see fit to employ from persons skilled in music, to give order," etc., as giving to the Rector, and not the Vestry, the power to employ and appoint the organist and members of the choir. While the *personnel* and direction of the choir belong exclusively to the Rector, the terms of employment and the salaries of the organist and members of the choir belong to the Vestry, collectively, to determine, as they only have

the power to make such contracts as will affect the revenues or property of the Church.

In a word, the Vestry may contract for religious services only with such persons as the Rector may select.

Judge Hoffman ("*Ecc. Law of New York*," *p.* 88,) relates a case coming within his own knowledge, in which the question of their relative rights in this matter was discussed by a Rector and the other members of the Vestry, and wherein "an adjustment was made, by which the period of employment, the number of persons to be employed, and the salaries, were determined at a Vestry meeting, and the selection of persons and other regulations was left to the Rector." In commenting on this adjustment, he says: "This is the actual, legal, and canonical position; this, certainly, is the most expedient and Ecclesiastical."

In the author's opinion, an even more canonical and Ecclesiastical way, one that would give less occasion for friction between a Rector and the other members of the Vestry, would be for the Vestry to make an annual appropriation for the music of the Church, leaving the manner of its expenditure and other matters connected therewith to the Rector.

This question of the relative power of the Rector and the Vestry over the music of the Church will be further discussed in the consideration of the Rights and Duties of a Rector.

RECTOR'S CONSENT NECESSARY TO THE ALIENATION OF PROPERTY.

The Rector, *virtute officii*, is not only one of the three integral parts of a Vestry, he is also the head of

the corporation. Under the English Ecclesiastical Law, the possession of the churchyard, as well as the church, is in the incumbent.—(*Greenslade* v. *Darby*, *L. R.* 3 *Q. B.* 421; *Stocks* v. *Booth*, 1 *D. & E. Rep.* 428; *Burn's "Ecc. Law," Vol.* I., *p.* 377; *Cripp's "Church and Clergy," p.* 433.)

These cases were cited and approved by the Supreme Court of New Jersey in *Lynd* v. *Menzies* (33 *N. J. L. Rep*, 162). In this case the Court decided that the Rector was possessed of the church buildings and grounds, and had the right to a civil remedy if such possession was invaded.

Judge Hoffman ("*Law of the Church*," *p.* 254) says: "By the Common Law, the fee of the glebe and lands of the Church, vested in the incumbent, and of course his union in any alienation was indispensable." Judge Story, in delivering the opinion of the Supreme Court of the United States, in the case of *Terrett et al.* v. *Taylor et al.* (9 *Cranch*, 43), thus states the law: "At a very early period, the religious establishment of England seems to have been adopted in the Colony of Virginia, and of course the Common Law upon that subject so far as it is applicable to the circumstances of that Colony." "The Minister of the Parish was, during his incumbency, seized of the freehold, in law or in equity, *jure ecclesiæ*, and during a vacancy the fee remained in abeyance." "As incident to their [Vestrymen's] office as general guardians of the Church, we think they must be deemed entitled to assert the rights and interest of the Church. But the Minister also, having the freehold, either in law or in equity, during his incumbency, in the lands of the Church, is entitled to assert his own rights as *persona ecclesiæ*.

No alienation, therefore, of the Church lands can be made, either by himself, or by the parishioners, or their authorized agents, without the mutual consent of both. And, therefore, we should be of opinion that upon principle no sale ought to be absolutely decreed, unless with the consent of the parson, if the Church be full." In the same case Judge Story again says: "It appears to us that in case of a plenarty of the Church, no alienation or sale of the Church lands ought to take place without the assent of the Minister, unless such assent be expressly dispensed with by some Statute."

The rule of the Common Law thus stated by Judge Story is undoubtedly the rule in this country, that the Rector of a Church has such interest in, and possession of the real property of the Church, that no sale or mortgage of such property can be made by the Vestry without his assent thereto, unless such assent has been expressly dispensed with by some Statute.

This principle has been recognized by the courts of many of the States.

In nearly all the States the law provides that, if the Church be without a Rector, then the same rights and privileges granted to the Rector, Wardens and Vestrymen shall be vested in the Wardens and Vestrymen. This, I apprehend, applies only to the title and the holding and custody of the Church property, and not to the alienation thereof. It is from the Bishop that the Rector receives his power to exercise his rectorial office in a Parish, and on the termination of that rectorship, the power returns to the Bishop. The Office of Institution affirms the Church's claim that the Bishop is the source of authority within his Diocese, and that his permission is necessary before a

Rector can act as such in any Parish within the limits of that Diocese.

In that Office, the Bishop uses these strong words: "We authorize you to claim and enjoy all the accustomed temporalities appertaining to your cure," etc.

As we shall have occasion to consider more carefully the Office of Institution when we come to treat of the rights and duties of a Rector, a further consideration of that Office at this time is therefore unnecessary.

In the Church, power does not *ascend* from the congregation or the Vestry to the Rector; it *descends* from above to the Bishops, and through the Bishop to the subordinate ministry (*Blunt's "Book of Church Law," p.* 227, *et seq.*; *Hoffman's "Law of the Church," p.* 468, *et seq.*). It is a principle of Ecclesiastical Law that, in case of a vacancy in the Rectorship of a Parish, the Bishop of the Diocese is, *ex-officio*, Rector of the Parish.—(*Blunt's "Book of Church Law," pp.* 321, 322.)

While the question has not been adjudicated upon by the courts in this country, so far as I have been able to find, I cannot but believe that if it came before them, the courts would sustain the contention that the consent of the Bishop was necessary to the alienation of the real property of the Church, in case there was no Rector thereof, and in the absence of any law explicitly empowering the Wardens and Vestrymen of the Church so to act in case of a vacancy in the Rectorship.

In Maryland the twenty-ninth section of the Vestry Act provides that no Vestry shall sell, alien or transfer any of the property of the Church in case there be no Rector, without the consent of the Bishop. Some

similar restriction, which is demanded by every principle of jurisdiction, ought to be incorporated into the laws of every State in order to remove all questions of doubt in the matter.

VACANCIES IN A VESTRY.

Vacancies in a Vestry may be caused by the death of a Warden or Vestryman, a removal from the place, *cum animo manendi*, or by a written resignation of his office. But a resignation must be accepted by the Vestry before it can take effect and create a vacancy. A Warden or Vestryman cannot resign his office without the consent of the Vestry.—(*Connitt et al.* v. *Dutch Church, etc.*, 4 *Lansing*, 339; affirmed 54 *N. Y. Rep.* 551; *Doremus* v. *Dutch Ch.*, 2 *Gr. Chan.* (*N. J.*) 332.)

The manner of filling vacancies in the Vestry, occasioned by death, resignation or otherwise, is regulated by the Statute Law of the State, or the Canon Law of the Diocese.

In Minnesota and a few other States the law provides that all vacancies must be filled by a special meeting of the Parish, duly called. The law is not imperative that a special Parish meeting must be called to fill a vacancy whenever occurring, only that if it be deemed advisable to fill such vacancy, then must a special Parish meeting be called so to fill it. The law, in most cases, merely provides how it is to be filled, not that it must be filled.

Such special meeting must be duly called, and in the same manner as an annual meeting is called, unless the law contains some provision to the contrary. The notice should explicitly state the purpose for which the meeting is called. This meeting is subject to the same

rules as to the manner of conducting it, and the qualifications of voters, as govern the annual meetings.

In the majority of the States and Dioceses the law gives to the Vestry the power to fill all vacancies in its own body, provided, of course, the remaining members constitute a majority of the Vestry. Should there remain a less number of Vestrymen than was necessary to make a quorum, no legal meeting of the Vestry could be had to fill the vacancies.

In some Dioceses provision is made that, in such cases, the Bishop of the Diocese may call a special meeting of the Parish, to elect a Vestry to serve until the next annual election. Where no provision is made by Statute or Canon for such cases, the Rector would probably have the right to call a special Parish meeting to fill such vacancies, and a meeting so called, and duly conducted, would undoubtedly be held to be a legal meeting, with power to act in the matter.

CHANGE IN NUMBER OF VESTRYMEN.

With few exceptions, the Law, Statute, or Canon, in the different States or Dioceses fixes the minimum and maximum number of Vestrymen which a Parish may elect.

Should a Parish desire for any reason to increase or decrease the number of its Vestrymen, it may do so, provided the number be not increased or decreased beyond the maximum or minimum limit fixed by law. When not otherwise provided for by law, the mode of procedure should be as follows:

The Vestry, at a regular meeting thereof, may adopt a resolution to change the number of Vestrymen to any certain number within the limits fixed by law.

This resolution, or the substance thereof at least, must be incorporated in the notice of the next annual Parish meeting ; the notice must also further state that such resolution will be submitted to the voters of the Parish at such meeting for their adoption or rejection. If the resolution be adopted by a majority of the legal voters at such annual meeting, a certificate must be made setting forth the resolution in full, that it was adopted at a regular meeting of the Vestry, a majority being present and voting therefor, that notice was duly given at the time of the annual meeting of the Parish, that said resolution would, at that time, be submitted to the qualified voters thereof for their approval or rejection, and that at the meeting held in pursuance of such notice, the said resolution was adopted by a majority of the qualified voters present.

As this certificate is an amendment of the original certificate of incorporation, it must be signed and acknowledged in the same manner as required for the original certificate.

This certificate must be filed with the same officer with whom the law directs the original certificate to be filed. The proposed change in the number of Vestrymen is effected upon the filing of the certificate. In those States where the law does not require the original certificate to be filed, the certificate of amendment need not, of course, be filed. In Kentucky the law provides that the Vestry may, by a two-thirds vote, amend the Charter, by filing and recording the amendment, in the same manner as provided for the original Charter or Certificate of Incorporation.

In those States where the original Charter is granted by the court, the law provides that the

Charter may be amended by the court. In such States a petition should be presented by the Vestry to the court, praying for an order to amend the Charter as desired. This order, when made by the court, must then be filed as the law directs, and when so filed the amendment becomes effective.

CHAPTER IV.

OF VESTRY MEETINGS.

THE law of the English Church provides that Vestry meetings must be called by the Rector, or by the Church Wardens with his consent. —(*Dale's "Clergyman's Legal Hand-Book," pp.* 107, 108. *Queen* v. *D'Oyly*, 4 *Perry and Davidson's Rep.*, 52.)

In the American Church the calling of Vestry meetings is, in nearly every case, regulated by Statute or Canon Law, which recognizes the right of the Rector to call meetings of the Vestry at such times as he may deem expedient.

In a few States the Wardens, or a certain number of the Vestrymen, are given like power with the Rector to call meetings of the Vestry. In the State of Michigan the Rector may call a Vestry meeting, by giving due notice thereof on the preceding Sunday, or a Vestry meeting may be called by a notice in writing signed by the Rector, either Warden, or any two Vestrymen, served upon each member.

In many of the States and Dioceses the law provides that the Rector shall call a Vestry meeting at the request of the Wardens, or of a certain number of the Vestrymen.

In the Virginia Dioceses and a few others, the law also provides that in case the Rector fail to call a Vestry meeting when so requested by a certain number of Vestrymen, such Vestrymen, if they deem it necessary, may themselves call a meeting. In case of

a vacancy in the Rectorship, the law usually provides that the Wardens may call meetings of the Vestry. In the absence of any law giving Wardens or Vestrymen the power to call a Vestry meeting, the Rector alone, if there be a Rector, has such power. But a peremptory writ of mandamus will lie to compel a Rector to call a Vestry meeting for the purpose of issuing a call for a special Parish meeting to fill vacancies in a Vestry, where the law provides that "the Vestry shall order a special election to fill such vacancies."—(*St. Stephen's Church Cases*, 25 *Abb. N. C.*, 230.)

But such a writ will not lie to compel a Rector to call a Vestry meeting, when the calling thereof lies wholly within his discretion.

A writ of mandamus will not lie to control discretion.—(*Fowler* v. *Pierce*, 2 *Cal.*, 165; *Berryman* v. *Perkins*, 55 *Cal.*, 483; *Union Colony* v. *Elliott*, 5 *Col.*, 371; *Ex parte School Directors, etc.*, 5 *Clark* [*Pa.*], 400.)

NOTICE.

The English Ecclesiastical Law requires "three days to intervene between the Sunday and the day of meeting."—(*Dale's "Clergyman's Legal Handbook," p.* 108; *Cripp's "Law of the Clergy," 6th Ed., p.* 682; *Reg.* v. *Best*, 16 *L. J., M. C.*, 102.)

Three days' notice of a Vestry meeting is required by the Statute or Canon in the majority of the Dioceses. In the absence of any Statute or Canon on the question, a three days' notice would be in compliance with the English Law, and would undoubtedly be held to be sufficient.

The manner in which the notice must be given is regulated in most cases either by the Statute or Canon

Law, or by the by-laws of the Parish. Unless otherwise provided by law, the meeting must be called under the hand of the Rector, or by a personal notice given by him to each member. A notice given by the Rector in time of Divine Service would be sufficient, provided all the members were present at the service when the notice was given, or a personal or written notice given to those members who were not so present. It would, no doubt, be a sufficient compliance with the law requiring the notice to be given under the hand of the Rector, if the Rector, in writing, should authorize the Secretary or Clerk of the Vestry to call a meeting thereof.

In the Diocese of Kansas City the Canon requires that "notice of all meetings of the Vestry shall be given by the Secretary, in writing, or publicly by the person officiating at some service preceding the meeting."

In New Hampshire the Canon provides that "no meeting of the Vestry shall be had unless at least three days' notice has been given by the Clerk, at the request of the Rector or one of the Church Wardens."

The notice may be sent by mail, and the law will presume the receipt thereof by the person to whom it was properly addressed.—(*Oregon S. S. Co.* v. *Otis*, 100 *N. Y.*, 446.)

But should the person to whom the notice was sent not receive it, the meeting would not be legal unless he be present.

A few Dioceses, as Alabama and Nebraska, provide for quarterly meetings of the Vestry. A Vestry may also, by by-law or resolution, determine upon stated days for regular meetings of the Vestry. Of such meetings the members of the Vestry are chargeable

with notice.—(*Smith* v. *Law*, 21 *N. Y. R.*, 296; *Willcock on Corp.*, *Part* I., *sec.* iv., *clause* 59.)

If, however, any business of moment is contemplated at such meeting, it would be advisable to give notice thereof, in order to prevent any question as to the legality of the meeting. A Vestry meeting would be legal, even though no notice thereof was given, provided every member of the Vestry be present, and proceed without objection to the transaction of business. The object of the notice being simply to apprise the members of the Vestry of the meeting in order that they may attend and exercise their rights, its necessity is waived if they be present.—(*People* v. *Peck*, 11 *Wendell*, 604.)

Also, if some of the Vestry be notified, and others not, a legal meeting may be had, provided every member who was not notified is present. But no legal meeting of a Vestry can be had, if any member thereof who was not duly notified, be absent.

QUORUM.

In a few of the States and Dioceses, the quorum at a Vestry meeting is regulated by the Statute or Canon Law. In New Hampshire it is required that the Rector *or* one Warden, and a majority of the Vestrymen must be present to constitute a quorum.

In the Dioceses of Chicago and Springfield the Canons provide that no meeting of a Vestry shall be held to be valid in which there shall not be present either the Rector or one Warden.

In Michigan the Statute Law provides that "a majority of the Vestrymen elected shall constitute a

quorum for the transaction of business." The New York Statute provides that in order "to constitute a quorum of the Vestry there must be present either:

"1. The Rector, at least one of the Church Wardens, and a majority of the Vestrymen, or

"2. The Rector, both Church Wardens and one less than a majority of the Vestrymen, or

"3. If the Rector be absent from the Diocese and shall have been so absent for over four calendar months, or if the meetings be called by the Rector, and he be absent therefrom, or be incapable of acting, one Church Warden and a majority of the Vestrymen, or both Church Wardens and one less than a majority of the Vestrymen."

This Statute is based on the true principles of Ecclesiastical Law, that in order to constitute a legal Vestry meeting there must be present the Rector (if there be one), a Warden, and a majority of the Vestrymen. "There are thus three integral parts of the body, which personally, as in the case of the Rector, or by representation, as in the cases of the Wardens and Vestrymen, must attend."—(*Hoffman's* "*Ecc. Law*," *p.* 71; *Humphrey's* "*Law of the Church*," *p.* 41.)

It is a well-established principle not only of English, but of American Law, that where a corporation consists of two or more *definite*, *integral parts*, there must be a majority of *each* integral part present, in order to constitute a corporate assembly of the whole, and without any one of which the corporation would not be complete, although none of them are by themselves a corporation.—(*Rex* v. *Bellringer*, 4 *Durn. & East. Rep.*, 810; *Rex* v. *Miller*, 6 *Durn. & East. Rep.*, 268; *Rex* v. *Thornton*, 4 *East.*, 294; *Rex* v. *Buller*, 8 *East.*, 389; *Rex*

v. *Morris*, 4 *East.*, 17; *Angel & Ames on Corp.*, 11*th Ed.*, *sec.* 97; 3 *Thompson*, *Corp.*, *sec.* 3916.)

In *Waterman's "Law of Corporations"* (*Vol.* I., *sec.* 68, *p.* 222), the law is thus stated: "It has been held, when the corporation is composed of several distinct parts or classes of persons, every integral part must be represented at a corporate meeting by a majority at least of its proper members, although the major part of all present when assembled are competent to do a corporate act."

In *University of Md.* v. *Williams* (9 *Gill & J.*, 365), it was held that a corporation cannot be considered as composed of distinct, definite, integral parts, unless the number of the members of each class is definite; but when it is so composed, a majority of the members of each class is necessary to constitute a corporate meeting or assembly.

In the case of *St. Mary's Church* (7 *Serg. & R.*, 517), the trustees of which consisted of three clerical and eight lay members, the Court held that "every integral part must be present at a corporate assembly, by a majority at least of its proper members; though the major part of all present when assembled are competent to do a corporate act." This case was cited and approved in *Craig* v. *First Pres. Church, etc.*, (88 *Pa. St. Rep.*, 42), the opinion of the Court being: "When a corporation is composed of several integral parts, and each part consists of a definite number, a majority of each part must be present to constitute a quorum."—(See also *Ex parte Rogers*, 7 *Cow.* [*N. Y.*], 526 *note*; *Whiteside* v. *People*, 26 *Wend.*, 634.)

The rule laid down by the Court in the case of *St. Mary's Church*, above cited, applies to and governs the

meetings of Vestries, unless otherwise provided for by law. A Vestry is a corporation composed of three distinct, definite, integral parts, each necessary to make the corporation complete, although none of the parts are by themselves a corporation. The title of the corporation, and the form of citing it, "the Rector, Wardens and Vestrymen," plainly evidence the three integral parts thereof, the Rector, the Wardens, and the Vestrymen. Each part is composed of a definite number; no one part is a corporation by itself; and each part is necessary, when there is a plenarty in the Vestry, to complete the corporation. Under the well settled rule of law governing corporations composed of several definite, integral parts, to constitute a legal meeting of the Vestry in those States where the law does not provide otherwise, there must be present the Rector, when there is one, one Warden, and a majority of the Vestrymen. That the courts would so hold if the question came before them, is a conclusion amply warranted, in the author's opinion, by their decisions in analogous cases.

The presence of the Rector to constitute a legal meeting of the Vestry is made necessary by the Statute or Canon Law, in several of the Dioceses. In such cases the Statute or Canon is simply declaratory of the general principle of law, that in a corporation, where there is a particular person who is called the head, such person forms one of the integral parts of that corporation, and his presence is necessary to constitute a legal meeting thereof.—(*Angel & Ames on Corp., secs.* 97, 503; *Case of St. Mary's Church*, 7 *Serg. and R.* [*Pa.*], 517; *Queen* v. *D'Oyly*, 4 *Perry and Davidson's Rep.*, 52; *Baker et al.* v. *Wood*, 1 *Curteis*, 507.)

The Rector is always described as the first, and as an integral part of the Parish. In citing a Parish he is specially named. He is the "*rector parochiae*," the "*præses ecclesiasticus.*" "On sound, legal principles he is the head and *præses* of the meeting."—(*Wilson* v. *M'Math*, 3 *Phill. Rep.*, 67; *Phillimore's* "*Ecc. Law*" [*2nd. Ed.* 1895], *p.* 1497.)

In *Cripp's* "*Law of the Clergy*" (*6th Ed., p.* 684) it is stated: "The Vestry thus constituted is incomplete without its head or president, and he, as we have seen by the Common Law, is the Minister of the Parish, whether Rector, Vicar, or perpetual Curate; and it has been said that he has a special duty to perform, and must be responsible to the Bishop for his care therein."

To constitute a legal meeting of the Vestry there must be present, as we have shown, not only the Rector, and at least one of the Wardens, but also a majority of the Vestrymen, that is, a majority of the full number of Vestrymen which the Parish is entitled to elect, not a majority merely of those remaining in office. "The words, a majority of the Vestrymen, evidently mean a majority of the number which the Statute requires to compose the Board of Trustees; not of the number to which, honestly or otherwise, by design or accident, the body of Vestrymen may have been reduced."—(*Moore* v. *Rector, etc.*, 4 *Abb. N. C.*, 51; *Angel & Ames on Corp., sec.* 503; *Rex* v. *Morris*, 4 *East.*, 17; *Rex* v. *Thornton, Ibid.*, 294; *Rex* v. *Miller*, 6 *Durn. & East. Rep.*, 268.)

RIGHTS AND DUTIES OF THE PRESIDING OFFICER.

The Rector, when present, has the undoubted right as the *præses ecclesiasticus*, to preside at all meetings of

the Vestry. It is only in his absence that a Warden has any right to preside.

While the Rector has the right to preside, he has no right to adjourn the meeting when it has once been convened. This right belongs to the meeting itself, of which the Rector is but one member.—(*Hoffman's "Ecc. Law," p.* 75.)

In *Stoughton* v. *Reynolds* (2 *Strange*, 1045), the question arose as to whether a Rector could, *ex mero motu*, adjourn an election without the consent of the meeting, and the Court decided that such an adjournment was void, and that while the Rector had the power of presiding, it did not follow therefrom that he possessed any power to adjourn the election.

In *Baker & Downing* v. *Wood* (1 *Curteis' Rep.*, 507), the Court in commenting on the above case, said: "Most undoubtedly, in such circumstances, there is no authority for the power assumed and exercised by the chairman in that case."

Judge Hoffman, after reviewing the decisions of the courts on this question, says ("*Ecc. Law*," *pp.* 77, 78), "It follows from these principles and authorities, as I apprehend, that a Rector cannot, by withdrawing from a Vestry once duly constituted, prevent its finishing business entered upon, or from entering upon business." And again: "Upon the whole, I consider the true conclusion to be, that when once a Vestry is fully assembled, a Rector, a Warden and five Vestrymen [that number being a majority of the Vestrymen then provided by Statute in the State of New York], it becomes a massed assembly, governing itself by the rules of Common Law in analogous cases; that the right of presiding is a privilege and a duty. If vacated

wilfully or not from necessity, it cannot dissolve the Vestry, or make its action illegal." The same rule would, of course, apply to the withdrawal of a Warden or a Vestryman.

CASTING VOTE.

Whether, in the absence of any law restricting the right of the Rector to vote, or giving to him but one vote, the Rector has the right, first, to vote as a member of the Vestry, and then, in case of a tie, to give the casting vote, is a question not wholly free from doubt. But there is no doubt that in those States and Dioceses where the law merely states that the Rector shall have "a casting vote," he also has the right to vote, first as a member of the Vestry, and then give a casting vote in case of a tie.—(*Cripp's "Law of the Church and Clergy," p.* 692; *Blunt's "Book of Church Law," p.* 302; *Dale's "Clergyman's Legal Handbook," p.* 122; *Queen* v. *D'Oyly*, 4 *P. & D. Rep.*, 52.)

Judge Hoffman states ("*Ecc. Law*," *pp.* 79, 80) that the clause of the Statute respecting the casting vote was examined in the case of the Church of the Atonement in 1866. The facts in the case were as follows: At a meeting of the Vestry of the Church named, there being no Rector, the Senior Warden was called to the chair. A resolution was offered to call a certain clergyman to the Rectorship of the Parish. Five of the Vestry voted in the affirmative, and five, including the presiding officer, voted in the negative, whereupon that officer declared the resolution lost. It was claimed that the presiding officer had no right to vote under the Statute giving a "casting vote" to such officer, except upon an equal division of the votes, not including his

own, and therefore, that the resolution offered was carried. The question was referred to Judge Hoffman for his opinion, which was, in part, "that by the true contruction of the Statutes, a Warden, by presiding, did not lose his privilege of voting as a member; and the phrase in the Statute therefore meant a casting vote in the sense of a double vote. Numerous authorities were cited." The question came before the Supreme Court, and is fully reported in the case of *People ex rel. Remington* v. *Rector, etc.* (48 *Barb.*, 603). The Court in rendering its decision therein said: "The question then is, What is the legal signification and effect of the phrase 'and have the casting vote'? Does the calling a Church Warden to the chair annul, for the time being, his right as a constituent member of the corporate body, or absolve him from the execution of any trust or duty devolved upon him as such member?" After stating that no authority for such a proposition was cited, except Cushing's "*Parliamentary Practice*," the Court proceeded: "As a majority of the Vestry did not vote in favor of calling the relator, he was not, therefore, called or elected, unless the Statute, giving the chairman a casting vote, is to be construed as meaning a vote only in case of a tie arising upon the votes of the other members.

"The plain reading of the Statute does not admit of such a construction. It first vests the power of election in a body of which the chairman is a constituent member. This is a grant to every such member of a right to vote. It then contains another grant of power to the presiding officer, *virtute officii*, in the words, 'he shall have the casting vote.'

"What is the legal effect of the latter grant? By the

Common Law, a casting vote sometimes signifies the single vote of a person who never votes but in the case of an equality; sometimes the double vote of a person who first votes with the rest, and then, upon an equality, creates a majority by giving a second vote. (1 *Bl. Com.* 181, *n; Jac. Law Dic. Parliament*, 7.) I think that in the Statute under consideration the term 'casting vote' is used in the latter sense."—(1 *Bl. Com.* 478, *n; Cowp.*, 377.)

This opinion of the Court is in complete accord with Ecclesiastical Law and usage, and clearly establishes the right of the Rector as the presiding officer to vote first as a constituent member of the Vestry, and then, in case of a tie, to give a casting vote.

Where the law expressly states, as in the Diocese of Pennsylvania, that the Rector shall have *one vote*, he has no right to a casting vote if he has already voted upon the question as a member of the Vestry.—(*Neilson's Appeal*, 105 *Pa., St. Rep.*, 180.)

It is the duty of the Rector, or other presiding officer, to submit to the Vestry every question presented for their consideration. Of his obligation to do so there can be no doubt, provided the proposition be one that is properly within the province of the Vestry to act upon.

"It is, on the other side, clear," says Judge Hoffman ("*Ecc. Law*," *pp.* 78, 79), "that he is not bound to put questions or resolutions tending to censure or criminate himself. When acts or resolutions are proposed hostile to the Rector, as under the Canon respecting a dissolution of the connection, or where a Vestry is authorized to present, the body acts of necessity as Warden and Vestrymen, not as the strict integral

body. (See *Hoffman's "Law of the Church," pp.* 323–25.) There may possibly be resolutions of neither character, as to which good sense and mutual forbearance must be the guide."

BUSINESS: HOW CONDUCTED.

To perform any valid act there must be present a duly constituted quorum of the Vestry. A less number can transact no legal business; although business transacted by less than a quorum of a Vestry would, no doubt, be held to be legal if such business was formally ratified and approved at a subsequent meeting when the required quorum was present, provided that such business was only current and ordinary business, not affecting property or rights.

While the presence of the Rector, if there be one, a Warden and the majority of the Vestrymen is necessary to constitute a legal Vestry meeting, yet, when so assembled, the integral features become lost, and the members constitute one body, and are then upon an equality of power as to every corporate purpose, each member having one vote, save that the presiding officer has a casting vote, except in those States or Dioceses where the law expressly provides otherwise.

In the case of *St. Mary's Church* (7 *Serg. & R.*, 517) before cited, the Court held that while each integral part must be represented to form a valid meeting, yet, when legally assembled, the majority of voices must govern, and were competent to do a corporate act.

(See also *Bick* v. *Hanscon* 9 *Foster* [*N. H.*] *Rep.*, 213; *Whiteside* v. *People*, 26 *Wendell*, 633; *Ex parte Rogers*, 7 *Cowen's Rep.*, 526, *note*; *King* v. *Bower*, 1 *Barn. & Cress.*, 492; *King* v. *Miller*, 6 *Durn. & East. Rep.*, 268.)

It has already been shown that after the meeting has once been organized, the withdrawal of the Rector or any other member of the Vestry cannot prevent the Vestry from finishing the business then under consideration, or even from entering upon new business. Were it otherwise, any member of the Vestry, or a minority thereof, would by withdrawing be able substantially to exercise a veto upon the action of the majority.—(*Hoffman's "Ecc. Law," p. 77.*)

While a Vestry have the power to elect a Rector, and to give their consent to the dissolution of the rectorship, they have no power whatever to investigate any charges that may be made against him, nor, as we have already shown, have they any power to dismiss him, or to reduce his salary. They cannot as a Vestry formulate charges against him to the Bishop or Ecclesiastical authority of the Diocese, unless they are expressly authorized to do so by the law of the Diocese. As this question will be more fully examined in the succeeding chapter, a further consideration thereof at this time is unnecessary.

It is the duty of Wardens and Vestrymen, when they have received due notice of a Vestry meeting, regularly called, to attend such meeting. Should they persist in refusing so to attend, the law will compel them, at the instance of the Rector, to attend, provided it is shown that the meeting desired is necessary, and their presence required to constitute a quorum.

"A mandamus will lie to compel Vestrymen to attend duly called meetings of the Vestry, where it is shown that they intentionally absent themselves ; that such meetings are necessary and cannot be held in their absence, and motion for the writ may properly be

made by the Rector."—(*People ex rel. Kenney* v. *Winans*, 29 *St. Rep.* [*N. Y.*], 651.)

WHEN MEETINGS ARE LEGAL WITHOUT THE PRESENCE OF THE RECTOR.

It is hardly necessary to state that, when there is no Rector, the Wardens and Vestrymen constitute a legal Vestry, and have power to perform any corporate act, except that no valid action can be taken to alienate or impair the title to the Church property without the consent of the Bishop. It seems to be the better opinion that if the Rector call the meeting under his hand, such meeting would be legal, even though the Rector was not present. It is also provided by law in some of the States and Dioceses that if a Rector be absent from the State or Diocese a certain length of time, as may be designated by Statute or Canon, the Vestry may meet in legal meeting, but in no case, when the Rector is not present, can the Vestry take any action to dispose of any of the real property of the Parish, or any part of the capital or principal of its personal estate, or impair in any way the rights of the Rector.

In New York State there is a Statute to this effect. To the same effect is the Statute Law in Maryland, except that the Vestry may authorize the sale of real property when the Rectorship is vacant, with the consent of the Bishop. It is unnecessary to consider the Statute Laws of the various States which govern a Rector's relation to his Vestry. It is sufficient to say that when the Statute Law provides for the holding of Vestry meetings, and also provides what shall constitute a legal Vestry meeting, such provisions of course

govern, and form, so far as they expressly provide, but no further, the absolute law both for the Rector, and for the Wardens and Vestrymen.

In some States and Dioceses, the law provides that a Warden or, in a few cases, that a certain number of the Vestrymen may call a meeting. But if the Rector should, for any reason, refuse to attend a meeting so convened, what redress, if any, could be had?

Judge Hoffman in considering this question (*"Ecc. Law," p.* 78) says: "In the English cases, in which the power to convene is lodged in a head officer, and his presence is indispensable to constitute the body, his obstinate refusal to convene it, or to attend, is an abuse of power, a neglect of a trust which the King's Bench will punish, and compel him to do it by mandamus, and will allow a criminal information to be filed against him."—(See also, *Willcock on Corp., Part* I., *p.* 29; *Rex.* v. *Gaborian*, 11 *East.*, 77 *note; Rex.* v. *Church Wardens, etc., of St. Martin's, 3 Barn. & Adolp.*, 907; *Rex.* v. *Church Wardens of St. Bartholomew's*, 2 *Barn. & Adolp.*, 506.)

Under the decisions of the English Courts, and also of our own Courts (*People ex rel. Kenney* v. *Winans et al.*, 29 *St. Rep.* [*N. Y.*], 651; *St. Stephen's Church Cases*, 25 *Abb. N. C.*, 230, before cited), if it was shown that a meeting was necessary for the best interests of the Church, that such meeting could not be held without his presence, and that he refused to attend any such meeting, after being informed of the subject to be considered, a writ of mandamus might lie to compel his attendance, although the question is not wholly free from doubt.

If it could be shown that the Rector had any discre-

tionary power in the matter, unquestionably, no writ would lie. (*High's Ex. Rem.*, *Sec.* 42; *Moses on Mand.*, 82; *State* v. *Kendall*, 15 *Neb.* 262, and cases therein cited.) Doubtless the refusal of a Rector to be present and preside at a Vestry meeting, deliberately persisted in, after he had received notice of the meeting, and of the business proposed to be transacted, would afford ground for an application to the Ecclesiastical Authority of the Diocese for a dissolution of the rectorship, under the Canon.

CHAPTER V.

OF THE RECTOR.

HIS ELECTION AND CALL.

TO the Wardens and Vestrymen of a Church belongs, as we have already shown, the power of electing and calling a Rector. The congregation or parishioners have no power whatever in the matter, unless such power be expressly conferred upon them by Statute.

The proceedings of a Vestry relative to the election and call of a Rector have already been commented upon, and need no further consideration, except to state, by way of emphasis, that the call, being a legal contract, and the salary accruing thereunder a debt recoverable in law, it should be made in writing, and state explicitly the stipulations for support.

On the acceptance of the formal call by the Rector-elect (which acceptance should also be in writing) and the reception of the Bishop's consent to such election, which consent should have been previously obtained, the contract between Vestry and Rector is complete.

While Vestries have the power, under the Statute Law, of electing the Rector of the Parish, they should ever remember, as it has been well said, that "this elective right of a Parish does not make the man whom they elect their servant; nor does it make them independent of and above him, to treat him as they please, as they would any hired man. It is only the popular

voice, speaking through their representative organ, declaring whom they will have to be their Rector; but he whom they choose is a Priest of God, a servant of Jesus Christ, and is to be set over them by the Holy Spirit. He is the bearer of a Divine commission to them, not they to him. He is charged with the full responsibility of their souls. He comes freighted with Divine blessings over and above anything the people can give. They elect him to exercise his functions and ministry in a particular field. The vote designates the field, and may be regarded as the 'lot cast into the lap'; but the vote does not make the Priest, it only accepts him as such, and limits the discharge of his duties within the particular Parish."

The Canons of the Church (*Canon* 15, *Sec. iii.*) require that on the election of a Minister into any Church or Parish, the Wardens thereof shall give notice to the Ecclesiastical Authority of the Diocese of such election. This notice may be in the following form:

"We, the Church Wardens (*or, in case of an Assistant Minister*, We, the Rector and Church Wardens), do certify to the Right Rev. (*naming the Bishop*), or to the Rev. (*naming the President of the Standing Committee*), that (*naming the person*) has been duly chosen Rector (*or*, Assistant Minister, *as the case may be*) of (*naming the Parish or Church*)."

This certificate must be signed by the Wardens, and in case of an Assistant Minister, by the Rector. The Bishop or the Standing Committee, being satisfied that the person so chosen is a qualified Minister of the Church, shall cause the said certificate to be transmitted to the Secretary of the Convention for record.

LETTERS OF TRANSFER.

If the Rector-elect be canonically resident in another Diocese than the one in which the Parish so electing him is situated, he must first procure from the Bishop or other Ecclesiastical Authority of the Diocese in which he last resided a testimonial setting forth his true standing and character. This testimonial must be presented by the Rector-elect to the Ecclesiastical Authority of the Diocese to which he proposes to remove, as directed by Canon.

The testimonial may be in the following words:

"I hereby certify that A. B., who has signified to me his desire to be transferred to the Ecclesiastical Authority of ———, is a Presbyter [or Deacon] of ———, in good standing, and has not, so far as I know or believe, been justly liable to evil report, for error in religion, or viciousness of life, for three years last past."

This Letter Dimissory, as it is called in the Canon, must be presented by the applicant to the Bishop or Ecclesiastical Authority of the Diocese named therein within six months from the date of its transmission. If not so presented, it becomes wholly void. It is made the duty of such Ecclesiastical Authority to accept the said Letters within three months from its reception, unless the Bishop or Standing Committee should have heard rumors, apparently well founded and sufficient to form a proper ground of canonical inquiry and presentment, against the character of the Minister named therein; in which case, the Ecclesiastical Authority shall communicate the same to the Ecclesiastical Authority of the Diocese to which such

Minister belongs. And unless and until the said Minister be exculpated from the said charges, the Ecclesiastical Authority is not required to accept the Letters Dimissory.

The duty of the Bishop to accept such Letters Dimissory applies only to a letter presented by a Minister who has been called to take charge of a Parish or Congregation in his Diocese. The acceptance of any Letters Dimissory presented by a Minister *not* so called is left by the Canon to the discretion of the Bishop, who may or may not accept it, according as he sees fit.

When such Letters are accepted, it is made the duty of the Ecclesiastical Authority accepting to give to the Minister named therein a certificate in the words following :

"I hereby certify that the Rev. A. B. has been canonically transferred to my jurisdiction, and is a Minister in good standing."

Until he has received such certificate, the said Minister has no right to officiate as the Rector, Stated Minister, or Assistant Minister of any Parish or Congregation of the Diocese or District to which he removes. The Canon also provides that no Minister residing in a Diocese to which he has not been canonically transferred shall minister therein without the license of the Bishop.

The Bishop accepting the Letters Dimissory is required to give prompt notice of such acceptance, both to the applicant and to the Bishop from whom it came, and the canonical residence of the Minister so transferred dates from the acceptance by the Bishop of his Letters Dimissory.—(*Canon* 16, *Sec.* v., *of the Digest.*)

A QUALIFIED MINISTER.

The wording of the Canons (Canons 15 and 16) is, as to one question, unfortunately, neither clear nor definite. Section v. of Canon 16 makes it the duty of the Ecclesiastical Authority of the Diocese to accept within three months after it is presented, the Letters Dimissory of a Minister, removing into another Diocese, who has been called to take charge of a Parish or Congregation therein, provided there be no rumors affecting his character.

This section of the Canon seems to give the Bishop no discretion in the matter, but makes it mandatory upon him to accept such Letters and receive the Minister into his Diocese, in the absence of any rumors affecting his character.

But Section iii. of the preceding Canon provides that: If the Bishop or the Standing Committee "*be satisfied* that the person so chosen [by the Vestry of a Parish] *is a duly qualified Minister*" of this Church, the Bishop, or the President of the Standing Committee, shall transmit the said certificate to the Secretary of the Convention, for record. This Canon would seem to give to the Bishop some discretion in the matter, and to permit him, first, to be satisfied that the person so chosen is a qualified Minister of this Church, before requiring him to admit such Minister into his Diocese, thus, apparently, conflicting with Canon 16, which leaves him no discretion in the matter, but requires that he *shall* receive him, when there are no rumors affecting his character. Are these two Canons in irreconcilable conflict, or can they be construed in harmony with each other?

That the General Convention, in enacting these Canons, intended that the various sections thereof should not be in conflict, but in harmony one with the other, is, of course, beyond question.

It is also a well established rule of interpretation, that the different parts of a Statute must be so construed as to make the Statute a consistent whole, and that the construction which produces the greatest harmony and the least inconsistency is the one which ought to prevail.

While the English Ecclesiastical Law is superseded by the Canons of the American Church, in so far as they provide, yet, as we have already shown, when any question arises as to the interpretation of a Canon, such interpretation must be had in the light of the English Law. The Canons under consideration are manifestly founded on the provisions of some of the English Canons of 1603, the 39th Canon of which, entitled, "*Cautions for Institution of Ministers into Benefices*," reads as follows:

"No Bishop shall institute any to a benefice, who hath been ordained by any other Bishop, except he first show unto him his letters of orders, and bring him a sufficient testimony of his former good life and behavior, if the Bishop shall require it; and lastly, shall appear, upon due examination, to be worthy of his Ministry."

This Canon was exhaustively considered, and its provisions construed, in the celebrated case of *Gorham* v. *The Bishop of Exeter*.—(*Moore's Rep. of "The Gorham Case,"* 459.)

The Bishop had refused to institute the Rev. Mr. Gorham when first requested to do so, on the ground that Mr. Gorham held opinions contrary to the disci-

pline and doctrine of the Church of England, and he was informed by the Bishop "that he felt it his duty to ascertain, by examination, whether he was sound in doctrine, before giving him institution."

Mr. Gorham submitted to such an examination, but, before its conclusion, protested against its continuance, on the ground that his doctrine had been sufficiently tested, and that the examination was becoming inquisitorial. At the conclusion of the examination, the Bishop refused to institute him, "on the ground of the unsoundness of the doctrines stated by him in the examination." Recourse was then had by Mr. Gorham to the courts to compel the Bishop to institute him. The Dean of Arches, before whom the case came, upheld the decision of the Bishop, and sustained the right of the Bishop to examine into the orthodoxy of a Minister before instituting him into a benefice.

The provision of the Canon of the American Church, that the Bishop is to be satisfied that the person chosen as Rector of a Parish by the Vestry thereof is a *qualified Minister* of the Church, before he shall be required to receive him into his Diocese, manifestly intends, in the light of the English Law, something more than that the Bishop is merely to be satisfied that such Minister has been ordained.

The term *qualified*, must, as Judge Hoffman maintains, receive a more comprehensive meaning than merely that he has been ordained; it must be taken to mean that the Bishop is to be satisfied of the *general fitness* of the Minister elected, both morally and intellectually, before he can be compelled to transmit the certificate of the Wardens, as to the election of such Minister, to the Secretary of the Convention for record, and thus

complete such election to a Parish under his jurisdiction.

Bishop Stillingfleet thus states the English rule, as to the Bishop's jurisdiction in the matter:

"The general rule is, and it was so resolved by the judges, that all such as are sufficient causes of deprivation of an incumbent are sufficient causes to refuse a presentee. But by the Canon Law more are allowed —*Multa impediunt promovendum quae non dejiciunt.*" —(*Stillingfleet's "Ecc. Cases," Case* I., *p.* 73.)

Judge Hoffman ("*Law of the Church*," *p.* 283), in considering the term *qualified*, as used in the Canon in question, says:

"The power which thus resides in the Bishop, and which this Canon recognizes, is amply supported and illustrated by English Authority. Indeed, there is no point more clearly settled, and as to which the interference of the civil tribunals is more restricted."

This section of the Canon is also in complete harmony with the first rubric in the "Office of Institution," which provides that the Bishop having received due notice of the election of a Minister into a Parish or Church, and "being satisfied that the 'person chosen is a qualified Minister of this Church,' may proceed to institute him into the Parish."

That the Bishop has the right to make such inquiry into the moral and intellectual qualifications of a Minister chosen by the Vestry of a Parish to be the Rector thereof, as shall satisfy him that the Minister so chosen is a *qualified* Minister, before instituting him, is, in my judgment, clearly the Law of the Church. No other construction of the term *qualified* is consonant with Ecclesiastical Law and usage.

But if the Bishop has the right to make such inquiry as shall satisfy him that the Minister chosen is a qualified Minister, before instituting him as Rector of a Parish, it is obviously clear that he has the same right to make such inquiries as shall satisfy him that the Minister so chosen is a qualified Minister, before it can be made his duty to receive him, and to consent to his election as Rector of a Parish within his jurisdiction.

No other construction of this section of the Canon under consideration is consistent with the "tenet of an Apostolic Episcopacy, or with the cardinal principle of the Catholic Church," recognized as such by the Church of England, and the Church in America, that the Bishop, *virtute officii*, is the source of Diocesan Authority.

When the Bishop of a Diocese receives from the Wardens of a Parish the Canonical Certificate of the election of a Minister to a Parish or Church within his jurisdiction, it seems obvious, not only that he has the right to make such inquiries as shall satisfy him that the Minister so chosen is a qualified Minister of the Church, but also that he may decline to transmit the Certificate of Election for record, and return the same to the Wardens so certifying, with his refusal to consent to the election of such Minister as Rector, if he be *not* satisfied that the Minister so chosen is a qualified Minister. Such a construction is, in my judgment, the only construction that can be placed upon the words of the Canon, "If the Bishop be satisfied that the person so chosen is a duly qualified Minister," consistent with the tenets of the Church and the principles of Ecclesiastical Law.

The question next arises, Is this authority and right

which is recognized by Section iii., of Canon 15, restricted or taken away by Section v. of the next Canon, which makes it the duty of the Bishop to whom Letters Dimissory are presented by a Minister, called from another Diocese to take charge of a Parish within the Diocese of such Bishop, to accept such Letters within three months, unless the Bishop should become cognizant of rumors against the character of the Minister concerned?

I think not. The two Canons do not necessarily refer to the same question, nor do I think that it was the intention of the Church that they should. Canon 15 refers to the consent of the Bishop to the election of a Minister as Rector of a Parish, and recognizes, as we have seen, his right, first to be satisfied of the qualifications of the Minister so chosen before giving his consent thereto. When his consent has been given to such election, the election is completed, and a legal call may then, and not till then, be transmitted by a Vestry to the Minister so elected.

Canon 16 has no reference to the *election* of a Minister; it clearly refers only to a Minister who has already been duly elected to the Rectorship of a Parish. Its wording is: "If a Minister removing into another Diocese, *who has been called to a Cure in a Parish or Congregation*, shall present Letters Dimissory," etc. It does not make it the duty of a Bishop to accept the Letters Dimissory of every Minister who may present such Letters, only of a Minister "who has been called to a Cure in a Parish."

This section of the Canon is clearly complemental to Canon 15, Sec. iii., and declaratory of the rights of a Minister who has been duly elected, and his election

consented to by the Bishop, in accordance with the provisions of that Canon.

The obvious intent of Section v. of Canon 16 is not to deprive the Bishop of his right first to be satisfied of the qualifications of a Minister elected to the Rectorship of a Parish within his jurisdiction, before giving his consent to such election under the provisions of Canon 15, but to provide that after the Bishop has acted under that Canon, and given his consent to the election of a Minister, he must accept the Letters Dimissory of such Minister whom he has already consented to receive into his Diocese, and which consent forms a part of the call accepted by such Minister.

Canon 15 is declaratory of the right of the Bishop, after he has received notice of the election of a Minister to a Parish within his jurisdiction, to be satisfied of the qualifications of the Minister so elected before giving his consent to such election. Canon 16 is declaratory of the right of such Minister, called, with the consent of the Bishop, to the Rectorship of a Parish, and having accepted such call, to have his Letters Dimissory accepted by such Bishop.

Its plain intent is to make it the duty of the Bishop to receive, as a qualified Minister of the Church, one whom he has already consented so to receive, and to accept the Letters Dimissory transferring such Minister to his jurisdiction, within a certain definite time after its presentation.

This, I submit, is the only fair and logical interpretation that can be had of the sections of the Canons under consideration, because:

First. It is the only interpretation that will bring the two Canons into harmony with each other.

In the "*American and English Encyclopædia of Law*" (*Vol.* XXIII., *pp.* 306, 309), it is stated: "All parts of the same Statute must be taken together. If one part standing by itself is obscure, it may be aided by another."

"That construction is favored which gives effect to every clause and every part of the Statute, thus producing a consistent and harmonious whole. A construction which would leave without effect any part of the language used should be rejected if an interpretation can be found which will give it effect."—(*The Elizabeth*, 1 *Paine* [*U. S.*], 10; *Sedgwick, on Con. of Statute Law*, 199–201; *Montclair* v. *Ramsdell*, 107 [*U. S.*], 147; *James* v. *Dubois*, 16 *N. J. L.*, 285; *Palmer* v. *Stumph*, 29 *Ind.*, 329; *Mayor, etc., of Baltimore* v. *Howard*, 6 *Har.* & *J.* [*Md.*], 383.)

Second. It is the only interpretation that is consonant with the general principles of Ecclesiastical Law, which, it is to be presumed, the General Convention did not intend to disregard or change.

It is a well settled rule of interpretation that in construing a Statute the "whole should, if possible, be made to harmonize; and if the sense be doubtful, such construction should, if possible, be given as will not conflict with the general principles of law, which, it may be presumed, the Legislature would not intend to disregard or change."—(*Manuel* v. *Manuel*, 13 *Ohio St.*, 458; *Hollman* v. *Bennett*, 44 *Miss.*, 322; *Pendleton* v. *Bank of Ky.*, 2 *J. J Marsh* [*Ky.*], 149; *Jones* v. *Lamar*, 34 *Fed. Rep.*, 454; *Dean* v. *Met. El. R. Co.*, 119 *N. Y.*, 540.)

The interpretation of the Canons herein contended for, viz., that Section v. of Canon 16 in no way restricts the right, recognized in Canon 15, of the

Bishop to be satisfied of the qualifications of a Minister elected to the Rectorship of a Parish, under his jurisdiction, before giving his consent to such election; that such consent is necessary to complete the election and to constitute such elected Minister the legal Rector of such Parish; and that the provisions of Section v. of Canon 16 making it the duty of the Bishop to accept the "Letters Dimissory" of a Minister "who has been called to take charge of a Parish or Congregation" in his Diocese, do not apply to the case of a Minister presenting such "Letters Dimissory" who was "called" by a Vestry without first obtaining the consent of the Bishop to such election, is fully sustained by the decision of the Supreme Court of the State of New York in the case of *The Rector et al. of St. James' Church, etc.*, v. *Huntington, etc.* (82 *Hun*, 125).

From the statement of the case, it appears that Mr. Brockway, a duly ordained Clergyman of the Protestant Episcopal Church, residing in the Diocese of Western New York, was elected Rector of St. James' Church, in the city of Syracuse, in the Diocese of Central New York, by the Vestry thereof on the 25th day of November, 1892, and a call to the Rectorship of that Parish was then transmitted by the Vestry to the said Brockway, which call was accepted by him three days later, November 28th. On the same day, November 28th, the Vestry sent a notice in writing to the Bishop of such election. The said Brockway then procured a "Letter Dimissory" from the Bishop of Western New York, which Letter was dated December 1, 1892, and delivered the same to Bishop Huntington, of the Diocese of Central New York, on December 2, 1892. The Bishop declined to accept the said Letter Dimissory,

and returned it to the Bishop of Western New York on the 10th of May, 1893. So far as the case shows, and it was so alleged by the plaintiff, there were no rumors affecting the said Brockway's character, nor did the Bishop allege that there were any, so far as the case shows, when he returned the said Letter to the Bishop of Western New York.

On the 2d of June, 1893, the Bishop was requested to give the Certificate of Transfer provided for in Section ii., of Canon 18, which request was refused.

On September 20, 1893, Bishop Huntington caused an order to be issued on Brockway, inhibiting him from officiating in the Diocese of Central New York.

The case shows that there was some correspondence between the Bishop and the Vestry, and that the Bishop objected to the election of Mr. Brockway as Rector of the Parish, and refused to give his consent thereto.

The complaint alleged that the Canons as to Certificate of Transfer, and as to the right of the Bishop to issue an order of inhibition, were null and void, as conflicting with the laws of the State. The relief asked for was, substantially, that the Bishop be compelled to give Mr. Brockway a Certificate of Transfer, that the order of inhibition be set aside as null and void, and that the Bishop be restrained from interfering with the carrying out of the contract between Mr. Brockway and the Vestry of St. James' Church.

The answer of the Bishop denied most of the material allegations of the complaint, and in substance alleged that the acts and conduct of the Bishop had been in entire conformity and in accordance with the rules and Canons of the Church.

Judge Merwin, in delivering the opinion of the

Court, said: "One of the theories of the complaint is, that these Statutes [referring to the Statutes giving Vestries power to call a Rector, etc.], gave the Church Wardens and Vestrymen so absolute a power to call and induct a Rector, that the Canon which requires a certificate of transfer before the plaintiff Brockway could officiate, and the Canon which authorizes the defendant to prohibit his officiating, were, as to the plaintiffs, null and void, as being in conflict with the Statutes above referred to. I do not understand that this position is now claimed by the plaintiffs to be correct. On the contrary, it is asserted that the affairs of St. James' Church must be administered in accordance with the rules, usages and customs of the denomination to which the corporation belongs (*People ex rel. Peck* v. *Conley* 42 *Hun*, 98, and cases cited), and the plaintiffs claim that the defendant should be compelled to give a certificate of transfer in accordance with the Canon on the subject, and that the order of inhibition should be set aside as not justified by the Canonical provision. So that, in effect, the action is to compel the observance by defendant of the Canons of the Church, so far as they may affect the right or power of the plaintiff Brockway to carry out his contract with the other plaintiffs.

"The right of the civil courts to interfere in Ecclesiastical matters is considerably limited. The general rule is that such right exists only where there are conflicting claims to Church property, or funds, or the use of them, or where civil rights are involved.

"The question here is, whether the right of the plaintiff Brockway to officiate as a clergyman in the Diocese of Central New York is such a civil right as to

give him a standing in the civil courts. . . . The theory of the action is that the plaintiffs need something more than they now have, in order to make and consummate a complete and operative contract. . . . The right of Brockway to be transferred to the Diocese of Central New York was simply an Ecclesiastical right, based on no contract, but on the Canons of the Church.

"Have we any right to order the specific performance of the Canon or supervise the action of the proper officer under it? The weight of authority is, I think, against it. But, assuming that the plaintiffs have a civil right that may be considered here, the order of inhibition is in their way. This order was issued by the officer who, under the Canon applicable thereto, had the right and power to issue such an order. He had, as Bishop, jurisdiction of the subject-matter, and Brockway, the person to whom it was directed, was within his Diocese seeking from him recognition. Brockway had submitted to him his 'Letter Dimissory,' and this had been returned to the Bishop who gave it, and the defendant had refused to give a certificate of transfer. . . . It ['the order of inhibition'] is alleged to be in conflict with the law of the State in that it interfered with the pending contract between the plaintiffs, but this ground is not now pressed. No good reason is apparent for treating the Canon as unreasonable or in conflict with the law of the State. . . . It seems to me very clear that the defendant had jurisdiction to make the order, and if so, under the law as laid down in the *Connitt* and the *Walker* cases, we have no right to consider the merits and determine whether there was just cause for the order. It being valid and

binding on the parties and not reviewable here, the plaintiffs are not in a position here to ask the Court for relief. They cannot ask this Court to aid them in completing their contract, when one of the parties to it is not qualified to enter into it, according to Canons and rules that bind both parties.

"The plaintiff Brockway voluntarily entered the ministry of the Episcopal Church and thereby became subject to the rules and Canons of that Church. In case of any dissatisfaction with the manner in which the Ecclesiastical affairs of the Church were administered, he took the benefit or burden of whatever remedies were provided for within the Church. He has not alleged that he has exhausted the remedies within the organization, an allegation which has in some cases been held to be necessary. Nor is it alleged that he has not a complete remedy within the Church for any injustice the defendant may have done."

OFFICE OF INSTITUTION.

Among the Offices of the Church, is an "Office of Institution of Ministers into Parishes or Churches." It was formerly provided by Canon that the Bishop or President of the Standing Committee might, at the instance of the Vestry, proceed to have a Minister duly elected and called to the Rectorship of a Parish, provided he be a Presbyter, "instituted according to the Office established by this Church, if that Office be used in the Diocese." While there is now no Canonical provision for the use of this Office, there is still the provision of the rubric.

The first rubric in the said "Office" provides that "the Bishop having received due notice of the elec-

tion of a Minister into a Parish or Church as prescribed by the Canon, concerning 'the Election and Institution of Ministers,' and being satisfied that the 'person chosen is a qualified Minister of this Church,' may proceed to institute him into the Parish."

While this "Office of Institution" does not confer upon the Rector of a Parish any rights not pre-existing, it recognizes those rights which are inherent in the office of Priest-Rector, and expresses the mind and will of the Church as to the relation which the Rector of a Parish sustains to the Vestry thereof, and is the key to the true interpretation of her laws relating to the respective rights of Rector and Vestry in her temporalities.

The "Office of Institution" is therefore deserving of our careful consideration. This Office is manifestly founded upon the Office of "Induction" of the Church of England. The seventeenth Canon of the General Convention of 1789 referred to "the induction of a Minister into any Church or Parish" as a matter of course and, by a fair implication, would seem to have required it. As no "Office of Induction" had at that time been set forth by the American Church, the induction of a Minister into a Church implied, of necessity, induction according to the Office of the English Church. And until 1804, when the Church set forth and established her own "Office of Induction," every Minister inducted into a Church or Parish was inducted according to the "Office of Induction" of the Church of England, and which, until superseded, was the "Office of Induction" of the American Church.

Our first inquiry, therefore, must be as to the mean-

ing of the word "Induction," as used in the Office of the Church of England.

Burn, in his work on "*Ecclesiastical Law*" (*Vol.* I., *p.* 167), says that the whole matter of admission, institution and induction is well explained in Sir Simon Degge's "*Parson's Counsellor*," which he quotes as follows: "If the Ordinary, etc.; upon the examination of the Clerk, find him fit in all points, as above in the first chapter is directed, then he admits him in these words: *Admitto te habilem, etc.*, and thereupon the Ordinary institutes him in these words: *Instituo te rectorem ecclesiæ parochialis de C. et habere curam animarum, et accipe curam tuam et meam.*

"When the Bishop hath instituted the Clerk, the Ordinary maketh a mandate under seal to the Archdeacon of the place, or to such other Clergyman as he pleases, to induct the Clerk; and it may be made by the dean and chapter, but not by the patron; for though by the institution the Church is full against all persons except the King, yet he is not complete parson till induction; for by the institution he is admitted *ad officium*, to pray and preach, yet he is not entitled *ad beneficium* until he be formally inducted; which may be done by the delivery of the ring of the church door, or latch of the church gate, or by delivery of a clod or turf and twig of the glebe; but the most common and usual way is, and therefore the safest, by delivery of the bell rope to the newly instituted Clerk, and the tolling the bell."

Three separate acts are herein noted, *admission*, *institution* and *induction*.

First: As to *admission*. Nearly all the churches in England in the early times were built by the lords of the manor, or other individuals, to whom the law gave

the right to nominate the persons who should minister in such Churches and be entitled to receive the revenues from the endowments thereof. This right of nomination was termed an *advowson*, which Blackstone says is defined to be "the right of presentation to a Church or Ecclesiastical benefice."

This right of a patron to *present* to a benefice is subject to one limitation, the person so presented must be a fit person; "and this fitness is to be decided (subject to the right of appeal) by the Bishop." If a benefice was to be conferred upon a mere layman he must first be ordained, and the Bishop had the right to examine him, and, if he saw fit, to refuse him ordination. The right of the Bishop to inquire into and judge of the qualifications of candidates for benefices was recognized by law as early as the fifth century. In the "Novell of Justinian" it was decreed that if any man erected an oratory and desired to present a Clerk thereto, he must first be nominated to the Bishop, who was to judge of his qualifications, and, when these were sufficient, then the Bishop was to admit the Clerk. After a Clergyman has been *admitted*, the Bishop may then proceed to *institute* him. The Bishop may himself exercise this right of institution, or he may delegate such right to another; nor is it necessary that it should be performed in the Diocese of the Bishop instituting, it may be performed anywhere the Bishop and the Clergyman seeking institution may be.—(*Blunt's "Book of Church Law," p.* 240.)

The ceremony of institution is exceedingly simple. The Clergyman to be instituted kneels before the Bishop or his Commissary, as the case may be, holding in his hand the written instrument of institution,

under the Episcopal seal. This instrument, thus held, the institutor reads aloud, the pith of which is as follows: "We do, by these presents, commit unto you the cure and government of the souls of the parishioners of said Parish, and do authorize you to preach the Word of God in the Parish church aforesaid," etc. This act of institution confers upon the person instituted the *jus ad rem*, but not the *jus in re*. It invests him with all *spiritual* functions, but conveys no *temporal* right. His legal, temporal rights are conferred upon him by another act termed "*induction*," which must take place in the church in which he ministers, or is to minister. The Bishop issues a mandate to the Archdeacon, or some other clergyman, to *induct* the Minister already instituted.—(*Blunt's "Book of Church Law," p.* 240.)

The ceremony of induction usually consisted in the inductor taking the hand of the person to be inducted and laying it upon the key or ring of the church door, or, if there was no such key or ring, then upon any part of the church wall, or churchyard, and saying to him these words, or words of similar import: "By virtue of this mandate, I do induct you into the real, actual, and corporal possession of this church, with all the rights, profits and appurtenances thereto belonging." The inductor then opens the door of the church and puts the person inducted within the church, who then usually tolls the bell as a proclamation to the parishioners that he is in possession of the temporalities of the church. The effect of this *induction* was to confer the *jus in re*, the complete and full legal rights of property, the actual corporal possession of the freehold of the church, churchyard, rectory, glebe, etc.,

upon the person already instituted to the cure of souls. —(See *Burn's "Ecc. Law"* [*Ed.* 1842], *Vol.* I., *p.* 173; *Blunt's "Book of Church Law,"* *pp.* 242, 243.)

This was the English Law and the Law of the Colonial Church. It was also the Law of the American Church, so far as it was applicable, at the time when the "Office of Induction" was set forth and established by the Convention of 1804. While it was the Law of the Colonial Church, yet was it impossible for that Church to comply with all the formalities of that Law. There was no patron to present, and no Bishop to whom presentation could be made.

The general system which prevailed in the Colonies was a right of presentation by the Vestry or the Parish, and, in some cases, of induction by the Governor. In the Plantation of Virginia, for instance, a Statute enacted in 1642 provided that the Governor was to induct any Clergyman into a Parish who might be presented by such Parish. Dr. Hawks states that he believes this right to have been exercised in the Plantation of Virginia up to the period of the Revolution. The form of induction was as follows: "—— A.B., His Majesty's Lieutenant and Governor-General, etc., To the Vestry of —— Parish in ——: In virtue of the presentation which you have made to me of —— to be your Minister, I do induct him into the real and corporal possession of the Parish of —— in ——, with all the right, profits, and appurtenances thereof."—(*Hawks'* "*Contr.*," *Vol.* I., *pp.* 53, 88; cited in *Hoffman's "Law of the Church,"* *p.* 290.)

In some of the other Colonies, similar Statutes were passed. The General Convention of 1789 enacted a Canon (Canon XVII.) requiring "that on the induc-

tion of a Minister into any Church or Parish, the parties shall deliver or cause to be delivered to the Bishop, or to the Standing Committee of the Diocese or District, notice of the same in the following form, or to this effect : " We, the Church Wardens," etc., the form of notice being almost identical with the form required by the former Canon.

The right of the Bishop to be satisfied that "the person so chosen is a qualified Minister of this Church" was also recognized by this Canon in substantially the same language as that now used in Canon 15, Section iii., of the present Digest. It was the evident intention of the Convention of 1789, in enacting this Canon, to supply some of the forms required by the English Office of Induction. The notice of the election of a Minister, required to be given to the Bishop by the Church Wardens, was to take the place of presentation by a patron, while the Bishop or Standing Committee were required to be satisfied that the person so elected was "a qualified Minister of this Church." Three things, as Dr. Hawks well says ("*Con. and Canons*," *p.* 269), were clearly within the intention of the General Convention of 1789 in framing this Canon.

"First, to provide the way of accomplishing something which they called induction; secondly, as in England, to allow no one to be inducted, but one shown to be canonically qualified, to the satisfaction of the Bishop; and thirdly, to give to the inducted Minister all the benefits of induction which the peculiar situation of our Churches and country would allow; pecuniary profit from any fixed source of Ecclesiastical revenue being out of the question, no other privilege remained but that of control over the church edifice; and with the

common opinion then entertained of the effect of induction, in this particular, it can hardly be doubted that they designed, as far as they could, to confer such control."

In 1804, the General Convention amended the 17th Canon of 1789 by the addition of two provisions, the first of which made induction necessary in all cases of the election of a Minister to a Parish. It provided that if the Minister-elect be a Presbyter, the Bishop "shall proceed to have him inducted according to the Office established by this Church." The second additional provision declared that "no Minister, who may hereafter be elected into any Parish or Church, shall be considered as a regularly admitted and settled Parochial Minister in any Diocese or State, or shall, as such, have any vote in the choice of a Bishop, until he shall have been inducted according to the Office prescribed by this Church." It will be noted that reference is made in the Canon to the Office of Induction "as established by this Church." This "Office of Induction," with its rubrics, as set forth and established by the Convention of 1804, was, in all its essential features, identical with the present "Office of Institution."

A rubric provided that "*Morning Prayer ended, the Priest who acts as the Inductor, standing within the rails of the altar, shall say:*" Then followed the announcement to the congregation that the purpose of the assembly was to induct the elected Minister as Rector of the Church, and inviting any one present to show just cause why he should not be so inducted. Then, if no cause, or none sufficient in the opinion of the Inductor, was shown, the Inductor was directed to "*read the letter of induction; and then*

shall the Senior Warden (or the member of the Vestry supplying his place,) present the keys of the Church to the new incumbent, saying: In name and behalf of ——— Parish (or Church), I do receive and acknowledge you, the Rev. *A. B.*, as Priest and Rector (or Associated Rector, or Assistant Minister,) of the same, and in token thereof, give into your hands the keys of this church.

"*Then the new incumbent shall say:*

"I, *A. B.*, receive these keys of the House of God at your hands, as the pledges of my induction, and of your parochial recognition, and promise to be a faithful shepherd over you, in the name of the Father and of the Son and of the Holy Ghost."

Dr. Hawks has made this first Canon of 1804, and this "Office of Induction" as established by the Convention of 1804, the subject of a note so able and so correct in its conclusions that I cannot forbear from quoting it. He says: "Such was the office alluded to in this Canon; and to this solemn and public delivery of the keys it seems difficult to attach any meaning, unless we consider it as a substitute for the formal ceremony of induction in the English Church, by placing the hand of the incumbent upon the keys or ring of the door.

"Viewed in this light it appears intelligible enough. It surely was not necessary to introduce so grave a ceremony for the mere purpose of certifying to the world that the relation of pastor and people had been created by the election of the incumbent; besides, this fact had already been announced in due form by the inductor.

"For what, then, was it introduced? Beyond all

question, it was designed by those who framed this office (viz., the Bishops, Priests and laymen assembled in General Convention) to be a *symbolical delivery*. A symbolical delivery of what? The keys of a house, placed in the keeping of a person, import the possession of the house to be in that person. They imply that the control of it belongs to that person. The new incumbent, in his reply, when he receives the keys from the Warden, recognizes the building as "the house of God"; and, of course, takes possession of it, under the symbolical delivery, to exercise over it such control only as is consistent with its character as the house of God: he virtually pledges himself, that while in his possession, it shall sustain no other character; he takes upon himself the duty (which must be confided somewhere) of guarding the edifice from desecration.

"What may or may not be desecration, in the judgment of an incumbent, is a distinct question with which we have no concern, in seeking to discover, from this Canon, the *intention* of those who made it; and by this Canon and Office of Induction, thus incorporated into it, to us, at least, it would seem that the highest legislative authority in the Church has declared the intention to be, by a symbolical delivery of the keys, on the part of the Vestry, to confide the custody and control of the church edifice to the Minister, for the purpose of keeping it sacred as 'the house of God.'"—(*Hawks*' "*Con. and Canons*," *p.* 273.)

The Canon of 1804 made induction necessary, in all cases of the election of a Minister to a Parish, and deprived the Minister not so inducted of the privilege of voting for a Bishop, or of being considered as a reg-

ularly admitted and setted parochial Minister in any Diocese. Bishop White states ("*Memoirs*," *1st Ed., p.* 255): "No objection had been made to the office; but the requiring of induction as essential to a valid settlement was evidently perceived to militate against the ideas, so prevalent in many places, of dismissing Ministers at pleasure. . . . In Maryland the measure interfered directly with the Vestry Law. From Carolina there was a memorial, desiring an alteration of the Canon. And in other places complaints were known to have been made."

The Convention of 1808 re-enacted the Canon of 1804, with the following changes: the word "induction" was changed to "institution," and it was newly provided, in order to meet the objections raised by the Dioceses of Carolina and Maryland, that: "This Canon shall not be obligatory on the Church in those Dioceses or States with whose usages, laws, or charters it interferes. Nor shall anything in this Canon, or in any other Canon, or in any service of the Church relative to the office of Associated Rectors, apply to the Church in those States or Dioceses where this Office is not recognized by the Constitution, Laws, or Canons thereof.

"But it is to be understood that this Church designs not to express any approbation of any laws or usages which make the station of a Minister dependent on anything else than his soundness in the faith, or worthy conduct. On the contrary, the Church trusts that every regulation in contrariety to this will be in due time reconsidered; and that there will be removed all hindrances to such reasonable discipline as appears to have belonged to the Churches of the most acknowledged orthodoxy and respectability."

The Canon of 1804 referred to the Office of Induction "established by this Church"; the Canon of 1808 referred to the Office of Institution "established by this Church." But that Office of Institution was precisely the same as the present Office of Institution, and the same as the former Office of Induction, except in the substitution of the words *institute* and *institutor*, for *induct* and *inductor*, thus clearly evidencing that the Convention in changing the name of the Office had no thought or intention of changing either its nature or import. Bishop White, in speaking of the action of the Convention of 1808, merely says ("*Memoirs*," 1*st Ed*, *p.* 30): "'The Office of Induction' established by the last Convention was changed in name to 'The Office of Institution,' and rested on recommendation, not on requisition, as before."

In changing the name of the Office, it is obvious that the Convention of 1808 did not fully understand the technical difference between the two Offices of *Induction* and *Institution*, as used in the English Church, but supposed that the words induction and institution were synonymous. The change in the name of the thing did not change the *thing* itself. The same ceremony of a delivery of the keys of the church to the Minister by the Church Warden, accompanied by the same identical form of words, was retained. The remarks of Dr. Hawks on this point are most pertinent. He says ("*Con. and Canons*," *p.* 277): "Whatever, in the intention of the makers of the Canon of 1804, was meant by the formal solemnities in the Office of *Induction*, it is obvious must here have been meant by retaining the very same ceremonies in the Office of *Institution*. The name given to the act cannot possi-

bly change its nature, unless it were plain that such name was given with a full knowledge of its technical import. Here the proof is direct that there was no such knowledge, and consequently no intention to be bound by the strictness of technical language.

"In truth, the Convention *defines* what it means by institution, by referring to an Office prescribing something utterly different from English institution, and precisely agreeing with what they had before called induction. The conclusion follows that they defined institution to mean induction, and by such definition they effectually shut the door against a construction which would bind them by technical meaning.

"Further, if any *legal* effects resulted from the performance of the solemn acts in the Office of Induction, whatever those effects may have been, precisely the same must follow upon institution, because the acts are the same; and the law, regardless of the name, will look only to *the acts done*, and declare the effect of them."

It is hard to see how these conclusions of Dr. Hawks can be successfully controverted; and so far as I have been able to find they never have been controverted, and will probably be denied by no one.

The Convention of 1814 repealed so much of the 29th Canon of 1808 as required the institution of an Assistant Minister before he could be considered as a regularly admitted and settled parochial Minister in any Diocese or State, and have a vote in the choice of a Bishop. It also declared, in explanation of the Canon of 1808, "that the provision concerning the use of the Office of Institution is not to be considered as applying to any congregation destitute of a house of worship."

The question now arises, *What are the consequences which follow upon institution?* What rights does the instituted Minister acquire by this act; and what rights do the Vestry relinquish? These questions have been most exhaustively considered by Dr. Hawks, in his work on "*Constitutions and Canons of the Church*" (*pp.* 280–87).

First. He considers that the instituted Rector cannot be dismissed from his charge without the concurrence of the Ecclesiastical Authority of the Diocese, nor without such concurrence leave his congregation against their will.

Second. That such Rector has *exclusive power* over the church edifice, as to granting or refusing its use for purposes of worship, a power with which no Vestry can lawfully interfere. He deduces this from the nature of the relation which the Rector bears to his congregation, and from the absolute necessity that the Rector, to whom the duty of watching over the souls of his congregation as one that must give account is committed, should himself teach them what he believes to be the truths of the Gospel, or select those who may teach in his absence.

The Church, recognizing the principle that the Rector is under a sacred obligation in this matter, has expressly legislated that he shall not be interfered with in the discharge of his functions among his people by any brother clergyman, nor, *a fortiori*, will she allow her laity to interfere.

Third. He next examines the question as to what, if any, are the rights of the instituted Rector in controlling the use of the church at other times and for other purposes than those of public worship on ap-

pointed days, and shows most conclusively, arguing from the Institution Office, and the delivery of the keys by the Warden as directed therein, that the Church intended by that office, and by the delivery of the keys, to confer the *exclusive control* of the church at all times, as to its uses, upon the instituted Rector. This he deduces from the close resemblance of the American "Office of Institution" to the English "Office of Induction," and the common purpose existing in both offices. While he concedes that the patronages, presentations, etc., of the English Law are inapplicable here, he shows that the Church obviously designed by her legislation to provide as good a substitute as was possible under the circumstances, for such presentation, etc., and to secure to the Church such advantages as were consistent with our political and Ecclesiastical condition. After showing that in England the ownership of the Church property is in the patron, until in due form he divested himself of such ownership, and as no such patron existed here, and it being necessary that the estate should be vested somewhere, therefore the expedient of Wardens and Vestrymen as *trustees*, in whom the estate should vest, was resorted to; he then proceeds to trace the resemblances between the two offices.

After stating that in England the ownership of the property is in the patron, while here it is in the Wardens and Vestry (by "Vestry" obviously meaning Vestrymen) he proceeds as follows:

"In England the patron selects the incumbent; here the Wardens and Vestry invite whomsoever of the Clergy they please.

"In England, the patron presents; here, the Wardens

and Vestry, by the Law of the Church, are required to do the same thing.

"In England, the presentation is to the Bishop, that he may ascertain if the person is 'canonically qualified.' Here the Wardens and Vestry are required to present to the Bishop the Minister whom they elect, in order that he may be satisfied that 'he is a qualified Minister of this Church.'

"In England, the Bishop, being satisfied, sends to a proper person his mandate for induction; here the Bishop may do the same thing.

"In England, the ceremony of induction consists of corporal investiture, a solemn delivery of the church edifice to the incumbent, by the significant token of placing his hand on the key of the door; here, the ceremony of institution is marked by the equally significant act of the public delivery of the keys of the church, by one of the corporation, in the name and on behalf of the whole Church.

"These resemblances surely are not the result of accident. They were designed, and as the ceremony of induction in England was known to give two things to the Clergyman, viz., a right to the revenues of the living, and an uncontrolled ownership over the building for the time being, is it an unreasonable opinion that the Church here, by its legislation, meant to do as much of the same things as the circumstances of the country would permit; and that, as she could grant no revenues, she meant by conferring the control of the edifice, to do the only other act which gave any significancy to the ceremony she had framed as analogous to an English induction? We cannot, therefore, but believe that the Church meant by the delivery of

the keys to confer the exclusive control of the church, as to its uses, upon the Minister."

As Judge Hoffman well says ("*Ecc. Law*," *p.* 86), it seems impossible to deny the force of this reasoning.

It has also been fully sustained by the Courts. In *Humbert* v. *St. Stephen's Church* (1 *Edwards' Ch. Rep.* [*N. Y.*], 308), Vice-Chancellor McCouen, in delivering the opinion of the Court as to the meaning of the clause in the Statute giving the Vestry power "to call and induct a Rector," says: "In what does the call and induction consist? I have no doubt it includes the power to fix the salary, as well as to make a contract with the Rector and deliver him possession of the Church. The call and induction appear to be substitutes for what is known in the Common Law as the right of advowson or presentation to an Ecclesiastical benefice and of institution and induction. The first belongs to the founder or patron of the Church; the second to the Bishop, which, according to Blackstone, 'is a kind of investiture of the spiritual part of the benefice'; and the last to the Church Wardens and Vestrymen, which is a giving of the possession or an investiture of the temporal part, as institution is of the spiritual."

While the "Office of Institution" is not of common use in the American Church, the neglect to use it being due in great measure to the fact that it does not increase the legal status of the Rector of a Parish, yet, in my judgment, the somewhat extended consideration herein given to that Office was necessary, as it is the solemn setting forth of the *mind of the Church*, as to the nature of the relation which a Rector of a Parish sustains to the Vestry thereof, and as to the extent of

the Rector's power over the Church edifice. The Office confers no new rights upon the Rector, it is simply declaratory of the rights which he already possesses, and which are inherent in his office. The one right which it most emphatically declares as belonging to the Rector is his possession of, and exclusive control over, the church edifice.

IS CALLED FOR LIFE.

A Minister called to the Rectorship of a Parish, in the absence of any express agreement limiting the tenure of such office, is called for life. This is the undoubted law of the English Church.—(*Burn's "Ecc. Law," Vol.* III., *p.* 542; *Blunt's "Book of Church Law," p.* 246; *Cripp's "Law of the Clergy," p.* 543.)

"By both the Canon and the Common Law, it was well settled that an incumbent once duly instituted was in for life, and could not be removed by the patron. He could only be dismissed upon a just sentence. The authority of Lord Coke as to the Common Law is frequently given."—(*Hoffman's "Law of the Church," p.* 333.)

This is general Ecclesiastical Law. This is also the law of the American Church (*Canon* 38, *Sec.* i., *of the Digest*), and has been so declared by the civil courts.

In *Jennings, etc.*, v. *Scarborough, etc.* (56 *N. J. L.*, 401), the Court held, if a Minister be called to the Rectorship of a Parish, and the call be without limitation as to time, "it is admitted that under such a call the tenure is for life, unless terminated by mutual consent, or the pastoral relation is dissolved as provided for in the Canons."

This decision expresses the well settled rule of law of the American Church. One exception to this otherwise universal rule of law should be noted.

In the State of Maryland it has been decided (*Bartlett et al.* v. *Hipkins*, 76 *Md.*, 5), that under the Vestry Act of that State, a call to the Rectorship of a Parish containing an agreement to pay a certain yearly salary was not a call for life, and that such call was terminable by the Vestry at the end of any such year.

It was decided in the same case that Canon 4 of Title II. (now Canon 38) of the Constitution and Canons of the General Convention was "not in force in the Diocese of Maryland, being in conflict with the Act of Assembly of 1798, Ch. 24, incorporating Vestries of the Protestant Episcopal Church."

DISSOLUTION OF RECTORSHIP.

Canon 38, Section i., of the Digest provides that a Rector canonically elected and in charge cannot resign his Parish without the consent of such Parish or its Vestry; nor can he be removed therefrom by such Parish or Vestry against his will, except in the manner and by the authority provided for in the Canons.

Section ii. of the same Canon provides that in case a dissolution of the pastoral relation between a Rector and his Parish is desired, and the parties are not agreed in respect thereto, notice of such desire and disagreement may be given by either party to the Ecclesiastical Authority of the Diocese in writing. And in case the Bishop of the Diocese be not able to settle the difference between the parties satisfactorily, or in case he

decline to consider the matter without counsel, "the Bishop (or, if the Diocese be vacant, any Bishop selected by the Ecclesiastical Authority), acting with the advice and counsel of the Standing Committee of the Diocese or Missionary District, shall be the ultimate arbiter and judge. While the Canon declares that it shall be the duty of both the Rector and the Parish to abide by the judgment of the Bishop, it fails to provide any penalty for the refusal of either party to abide by such judgment, leaving the penalty to be provided by the several Dioceses. Very few Dioceses have made any such provision, and Section ii. of Canon 38 is practically incapable of enforcement. In case of a serious disagreement between a Rector and his Vestry, there is, therefore, under the present Canon, no authority with power to decree a dissolution of the pastoral relation. That neither the Rector nor the Parish nor its Vestry can dissolve the pastoral relation, unless both parties mutually agree thereto, (except in the State of Maryland, as before noted, and those Dioceses that have made provision therefor), will not, I apprehend, be seriously questioned.

This question was thoroughly considered in *Youngs* v. *Ransom* (31 *Barb.*, 49), and the Court held that "Mr. Ransom was not called, nor did he agree to preach for a year, or for any specified time, nor at the will of the Church or Vestry. He was called to take charge of the Parish as Rector, and settled as such. It is not and cannot be denied, that the rule or regimen of the Episcopal Church as to the tenure of its Parish Ministers is, that when they have once been placed in charge

of congregations they can neither leave nor be dismissed, except by mutual consent, without the intervention of the Bishop. Without discussing the power to make, or the propriety of, agreements for the performance of clerical service limited in time, I think it is very clear that when a Minister is called or settled in an Episcopal Parish without any such limitation, he can only be dismissed, or sever the connection, by mutual consent, or by superior Ecclesiastical Authority, on the application of one of the parties. . . . I have no hesitation in the conclusion that when a Minister is called to and settled in the charge of a Parish, unless something to the contrary is distinctly expressed in the call and settlement, he can only be dismissed without his consent by the Bishop of the Diocese."

(To the same effect are *Batterson* v. *Thompson*, 8 *Phil. Rep.*, 251; *Lynd* v. *Menzies*, 33 *N. J. L.*, 162; *Jennings* v. *Scarborough*, 56 *N. J. L.*, 401; *Avery* v. *Tyringham*, 3 *Mass. Rep.*, 160.)

In the case last cited the Court says: "It has been the uniform opinion of all the judges of the higher courts, that when no tenure was annexed to the office of Minister by the terms of settlement, he did not hold his office at will, but for life, determinable for some good and sufficient cause, or by the consent of both parties."

A Vestry cannot indirectly force a dissolution of the pastoral relation by a reduction of the Rector's salary.

This point was expressly so decided in *Bird* v. *St. Mark's Church* (62 *Iowa Rep.*, 567). The statement of the case shows that the Vestry of St. Mark's Church, Waterloo, had, by resolution, endeavored to reduce the

salary of the Rector of the Parish, in order to compel him to consent to a dissolution of the pastoral relation. On refusal of the Vestry to pay him the salary originally promised to him, the Rev. Mr. Bird, the Rector of the Parish, brought an action to recover the salary so promised, and the Court held that "It was not competent for the Vestry of the Parish, in violation of the Canons of the Church, to dissolve the pastoral relations against the plaintiff's will. These Canons become just as much a part of the contract of employment of plaintiff as if they had been specifically referred to, or written out in full therein.

"The salary upon which the plaintiff was employed constitutes an essential part of the contract. If the defendant could be permitted to reduce the plaintiff's salary without his consent, it could force him to agree to a dissolution of the pastoral relation, and thus accomplish indirectly what it could not do directly. The right to the salary stipulated at the time the plaintiff accepted the position of Rector is a valuable property right secured to the plaintiff by contract. One party cannot ignore its provisions or violate them with impunity."

The courts are uniform in their decisions that the livelihood of one who withdraws himself from all secular pursuits, and devotes his life to the sacred work of the ministry, "needs special protection, and ought not to be dependent for a livelihood on the whims and prejudices of his congregation."

It has been well said that no description of men under the government of Jews, Turks or pagans would be so badly off as would the Clergy if the power of dismission lay with the people.

It has ever been the universal rule of the Church, that there should be no severance of the pastoral relation except by mutual consent, or by the due intervention of the Bishop of the Diocese. The civil courts have also recognized that there was a "nearness and sacredness of tie between such parties as admitted not of severance, but for legal offences or with the intervention of grave authority."

The eloquent language of Lord Stowell (*Evans* v. *Evans*, 1 *Hag. Cons. Rep.*, 35) as to another relation may well be applied here: "When people understand that they *must* live together, except for a very few reasons known to the law, they learn to soften by mutual accommodation that yoke which they know they cannot shake off; they become good husbands, and good wives, from the necessity of remaining husbands and wives; for necessity is a powerful master in teaching the duties it imposes."

RIGHT TO A HEARING BEFORE RECTORSHIP CAN BE TERMINATED.

It has already been shown that the Wardens and Vestrymen of a Parish have no power whatever to dismiss a Rector without his consent. If they desire a severance of the pastoral tie, and they and the Rector be not agreed in respect thereto, recourse must be had to the Bishop of the Diocese. The second section of Canon 38 of the Digest provides that in case of any such difference between a Rector and a Vestry or Parish, which may not be satisfactorily settled by the Bishop, then the Bishop "may ask the advice and consent of the Standing Committee of the Diocese or of the Council of Advice of the Missionary District,

and, proceeding with its aid and counsel, shall be the ultimate arbiter and judge." The judgment of the Bishop may be rendered without any hearing being accorded to the Rector or to the Parish, and it may be for this reason that the Canon inflicts no penalty on the parties in case of a refusal to abide by such judgment, leaving to the several Dioceses to provide the penalty for such refusal and what further proceedings shall then be taken.

Section iv. of the same Canon provides that this Canon shall not apply in any Diocese which has made, or shall hereafter make, provision by Canon upon this subject, nor in contravention of any right of any Rector or Parish, under the law of the civil authority.

But few Dioceses have legislated upon this subject, and the Canons of such Dioceses relating thereto are not so materially variant from Canon 38 of the Digest as to require separate consideration.

While the Bishop is the ultimate arbiter and judge in all cases of disagreement between a Rector and a Vestry or Parish, and can issue an order terminating the pastoral relation between the parties, he cannot issue such order, or subject such Rector to a penalty, upon any *ex parte* statements, or without affording him an opportunity to be heard in his own behalf. The rule is well stated by Judge Hoffman ("*Ecc. Law*," *pp.* 269, 270). In considering the question of the dismissal of Ministers he says: "When the sanction of the Ecclesiastical Authority is sought, a duty is imposed, as well as a power conferred. It cannot concur on any *ex parte* statements, or without an examination. The right to be heard is a Common Law right, and must be observed, before any penalty of any description can be lawfully inflicted.

"If the consequence of a dismission with concurrence is to dissolve and discharge the civil relations and contracts of the parties, it can only be so permitted when the essential rules of the law are observed. A competent authority to hear and decide—a proper reasonable notice of the matters objected to—an opportunity to meet and reply to them, are fundamental."

The right of the Rector to be heard in his own defence was strongly affirmed by the Supreme Court of New Jersey, in the important case of *Jennings* v. *Scarborough et al.* (56 *N. J. L. R.*, 401).

From the statement of the case, it appears that one Jennings, a regularly ordained Minister of the Church, was canonically transferred to the Diocese of New Jersey, in May, 1889, and called to the Rectorship of Grace Church, Westfield, N. J., September 29, 1890. Dissensions having arisen in the Church, the Bishop, on February 27, 1893, made the following order:

"I. The Rev. J. B. Jennings shall cease to be Rector of the Parish of Grace Church, Westfield, on March 15, 1893. II. The Parish of Grace Church, Westfield, shall pay to the Rev. J. B. Jennings all arrears of salary due at that time."

The purport and effect of this order was to dissolve the pastoral relation of the said Jennings with his Parish. The proceedings, of which this order was the outcome, were instituted by a petition dated February 1, 1893, and signed by all the persons who at that time were Wardens and Vestrymen of the Church; it was addressed to the Bishop of the Diocese, and asked for a dissolution of the pastoral tie existing between the Parish and its Rector, Jennings, in accordance with

Title III., Canon 4, of the Constitution and Canons of the Diocese.

Section i. of this Canon provides that in case of a serious difference between the Rector of any Church and the congregation thereof, it shall be lawful for a majority of the Vestry to make a representation to the Bishop of the facts in the case, and agreeing to submit to his decision in the matter; they shall at the same time serve a copy of the representation on the Rector.

Section ii. makes it the duty of the Bishop to seek to bring the parties to an amicable conclusion in the matter.

Section iii. provides that if the matter be not amicably settled, then the Bishop shall convene the Standing Committee, and shall give notice to the parties to appear and present their proofs at such time and place as he may appoint.

Section iv. provides that the Bishop, with the advice and concurrence of the majority of the members of the Standing Committee who shall have been present at the hearing, shall make such order as he may deem best for the true interests of the Church.

Section v. provides that if any agreement made under Section ii., or any order made under Section iv., of this Canon be disregarded, the Bishop may convene the Standing Committee, and after hearing such further proofs and arguments as may be presented to him, make such further order as he may think proper, which order shall have the same effect as an order made under Section iv. of the Canon.

Upon the presentation of the petition of the Wardens and Vestrymen, the Bishop, as it would appear from the statement of the case, without notice or hear-

ing the said Jennings or his proofs, and without convening the Standing Committee, made an order dated February 4, 1893, containing his decision that Mr. Jennings should cease to be the Rector of this Church, on and after February 15, 1893, and that the Wardens and Vestrymen of the Church should pay Mr. Jennings all arrears of salary up to that date.

This order of February 4, 1893, "which," the Court says, "is properly referable to the 2d section of the Canon as an effort to obtain an amicable conclusion of the differences between the parties," was, with a copy of the petition, transmitted to Jennings, by the Bishop.

In a letter to the Bishop dated February 10, 1893, Mr. Jennings declined to accede to the Bishop's order, and asked that if the case must go to the Standing Committee, to let it be done in accordance with the Canon, and that he did not believe the Bishop's order received by him was in accordance with Title III., Canon 4, Section iv.

The Bishop then called a meeting of the Standing Committee under Section v. of the Canon, and sent a notice to Mr. Jennings that he had called a meeting of the Standing Committee under the said section.

At the meeting of the Standing Committee thus called, Mr. Jennings was present, but no proofs were presented. Nor was he, in the opinion of the Court, accorded a hearing as provided for in the Canon. After hearing the statement of the Vestry of the Church, and the statement of Mr. Jennings, the Bishop made an order that Mr. Jennings should cease to be Rector on March 15, 1893 The case came before the Supreme Court on a writ of *certiorari.*

The Court in delivering their opinion said: "The

Bishop's order of February 4, not having resulted in an agreement between the parties, the procedure to dissolve the pastoral relation *in invito*, should have been under Sections iii. and iv. of the Canon and not under Section v.

"There is a distinction of great importance between the procedure prescribed by Section iii., and proceeding under Section v. . . . Sections iii. and iv. constitute a tribunal consisting of the Bishop and the Standing Committee for the hearing of proofs and arguments presented before it. After such hearing is concluded, the Bishop may make such an order in regard to the matter as he may think to be just and for the true interests of the Church, provided the same receives the concurrence of a majority of the Standing Committee present at the hearing. . . . The provision under Section v. is by way of an appeal from an order made under some one of the preceding sections."

After showing that the notice to the Vestry of the Church, and to Mr. Jennings, stated that the Standing Committee was summoned under the provisions of Section v. of the Canon, the Court said: "We think the prosecutor [Jennings] was not entitled to be represented by counsel at the hearing, but that he was entitled as of right to a hearing before the committee, pursuant to Sections iii. and iv. of the Canon, especially as the result of the deliberations of that tribunal might deprive him of property rights, which, under the general Canons of the Church, inured to him in virtue of his rectorship. . . . Courts of law will not interfere to control the proceedings of Ecclesiastical bodies in spiritual matters which do not affect the civil rights of individuals, nor will they interfere

with the action of the duly constituted authorities of religious societies in matters purely discretionary. (*Livingston* v. *Trinity Church*, 16 *Vroom*, 230.) But where, as in the present case, the civil rights of an individual are involved, jurisdiction is committed to the courts of law to protect those rights, which the Court cannot discard. . . . As already appears, the course of procedure for dissolving the pastoral relation of the Rector with his Parish is, by the Canons of the Episcopal Church, specially prescribed. An order dissolving that relation, not made in conformity with the Canons, is *coram non judice*.

"Nor is there, by the law of the Episcopal Church, another tribunal to which an appeal may be made. . . . With respect to the judgment that shall be pronounced by the Bishop with the concurrence of the committee, after a hearing, the authority of the Bishop is discretionary and supreme. The prosecutor [Jennings] is an ordained Minister of the Church, is subject to the laws of the Church and to its constituted authorities, but at the same time he is entitled to a hearing in compliance with the laws of the Church before judgment is pronounced. The proceedings on which the order in question was made are not in compliance with the Canons of the Church, and for this reason the order should be set aside."

This decision clearly establishes the right of a Rector to be heard in his own defence, before he can be subjected to any penalty or deprived of any right.

The maxim of law that every man is presumed to be innocent until he is proved guilty, applies with special force to a clergyman.

Canon 24, Section i., of the Digest enumerates the

offences for which Ministers may be tried and punished.

Unfortunately, as it seems to the author, the mode of procedure in the trial of a clergyman, other than a Bishop, is left to the regulation of the respective Dioceses. Article IX. of the Constitution merely provides that Presbyters and Deacons shall be tried by a Court instituted by the Convention of the Diocese in which they are canonically resident. While Canon 24, Section i., directs that in case of a Clergyman "being found guilty, he shall be admonished, suspended, or deposed from the Ministry, as shall be adjudged by the Trial Court." Provision is made for an appeal to the Court of Review, but the powers of that Court are extremely limited in all cases involving any question of doctrine, faith, or worship.

Accordingly, the methods of presenting an offending Clergyman, or of bringing a complaint against him, as well as the methods of conducting the trial, adopted in the various Dioceses, vary in detail and sometimes in principle. As the consideration of this subject does not properly fall within the scope of this work, reference to these varying details and principles is unnecessary.

I have already said that, in my judgment, the mode of procedure in the trial of a clergyman is *unfortunately* left to the regulation of the respective Dioceses.

I call it *unfortunate*, because it renders the department of the Judiciary the weakest and most defective part of our whole Ecclesiastical system, in fact deprives the Church of any judicial system having aught of practical value.

Uniformity of judicial proceeding, judicial interpretation, and judicial decision, so vitally important to the

peace and prosperity of the Church, are impossible of attainment under our present Constitution and Canons. If the members of the American branch of the Catholic Church are to be kept together with one mind and one heart, in her various Diocesan parts, then must the Church supply the need of clergy and people alike, *a settled court of justice.*

To-day, a rubric or Canon of the Church may receive one interpretation in one Diocese and a contrary interpretation in another. In the one Diocese, under one interpretation of some rubric or Canon of the Church, a Clergyman may be convicted and punished for a violation of such rubric or Canon. Convicted in the one Diocese, he knows that in the other he would be acquitted of the same offence. Doubting, as he well might, the propriety, if not the legality of the punishment inflicted upon him, he would fain appeal to some tribunal competent to decide between these conflicting interpretations, but the Church has no final tribunal to which such an appeal can be made concerning any question of doctrine, or faith, or worship.

The Courts of Review, established in 1904, to hear and determine appeals from decisions of Trial Courts, have no powers, under the proviso of Canon 30, Section v., to determine any question wherein the doctrine, or faith, or worship of the Church is involved, "until after the establishment of an ultimate Court of Appeal." They presuppose, and depend for their efficiency, on a Court of Appeal as permitted by Article IX. of the Constitution.

These two things, the Church, in my judgment, sadly needs to-day, a uniform mode of procedure for the constituting of courts and the conducting of trials in every Diocese, and a "Court of Appeals, with power authori-

tatively and finally to settle the true interpretation of Constitutions and Canons, *ut sit finis litium.*"

THE RECTOR AN INTEGRAL PART OF THE VESTRY.

It has already been shown that the Vestry is composed of three integral parts—the Rector, the Wardens, and the Vestrymen; and that each part personally, as in the case of the Rector, or by representation, as in the case of the Wardens and Vestrymen, must attend, to constitute a legal meeting of the Vestry. This is the law of the Church, except in such States or Dioceses where the Statute or Canon Law provides otherwise. These exceptions have already been sufficiently noted in the chapter relating to "The Vestry."

RIGHT TO CALL PARISH AND VESTRY MEETINGS.

The Rector has the right, in the first instance, to call all meetings of the Parish and Vestry. In some Dioceses, as already noted, this right is shared by the Wardens, and in a few Dioceses by a certain specified number of the Vestrymen. It may also be said that it is not only the right, but the duty, of the Rector to call such meetings when necessary.

In many of the Dioceses, the Canon Law, or the law of the State, provides that the Rector "*shall* call" meetings of the Vestry, and, in some cases, special meetings of the Parish, when so requested by the Wardens, or a certain number of the Vestrymen, or both. The courts have held that when the law so provides, a writ of mandamus will lie to compel him to call a meeting when so requested.

(For a fuller discussion of this subject, see Chapter IV.)

PRESIDING OFFICER AT PARISH AND VESTRY MEETINGS.

It may be stated as a rule with but very few exceptions, that the Rector, when present, presides at all meetings of the Parish, and of the Vestry.

From the earliest times of the Christian Church the Rector of the Parish, *virtute officii*, presided at all meetings thereof. The very word *Rector* implies governing in matters concerning the Parish. The courts have decided that the right of a Rector to preside at such meetings is a "Common Law right," he being "the functionary who is at the head of the Parish for all Ecclesiastical purposes."

RIGHT TO VOTE AND GIVE THE CASTING VOTE IN CASE OF A TIE.

The Rector has a Common Law right to vote at all Parish meetings. "He has a right of sitting from his freehold in the church."—(*Baker & Downing* v. *Wood*, 1 *Curteis' Rep.*, 507.)

The Rector has also the right to vote upon all questions presented at a Vestry meeting. He also has the right to a casting vote in case of a tie, except in those Dioceses where the Statute or Canon Law expressly deprives him of that right.—(*People* v. *Rector, etc.*, 48 *Barb.* [*N. Y.*], 603; *R.* v. *D'Oyly*, 12 *Adolp. & Ellis*, 139; *Blunt's* "*Book of Church Law*," *p.* 302.)

(For exceptions to this rule, see discussion of this question in the preceding chapter.)

Except in those Dioceses where the Statute or Canon Law provides otherwise, the Rector when present has the right to decide all questions relating to the qualifications of voters, at all meetings of the Parish. The

right of presiding involves also the right of deciding upon the qualifications of voters.—(*Hoffman's "Law of the Church," p.* 244; *Blunt's "Book of Church Law," p.* 302; *Hoffman's "Ecc. Law," p.* 66.)

RIGHT TO THE KEYS AND CONTROL OF THE CHURCH BUILDINGS.

The Rector of a Parish has the exclusive right to the keys of the church. He also has possession of and exclusive control over the church edifice and all other Parish buildings used for Ecclesiastical purposes. The law of the English Church on this subject is well stated by Blunt in his "*Book of Church Law*" (*page* 273, *7th Ed.*). He says: "The whole church and churchyard being vested in the Rector or Vicar, as his freehold, access to either is entirely under his control. He alone has any legal right to the keys of the churchyard, belfry, nave, vestry and chancel; and no one can legally use them for entrance thereto, except by his permission. 'The Minister,' said Sir John Nicholl, 'has, in the first instance, the right to the possession of the key, and the Church Wardens have only the custody of the church under him. If the Minister refuses access to the church on fitting occasions, he will be set right on application and complaint to higher authorities.'"—(*Lee* v. *Matthews*, 3 *Hagg. Ecc.*, 169.)

In another place he says (*Idem, pp.* 322, 323): "The site and fabric of the church, with all that is permanently attached to that fabric, are thus, in the eye of the law, the property of the incumbent for the time being. The rights thus acquired carry with them the exclusive right of access to the church, and also (saving any established right of way) to the churchyard;

so that none can lawfully exclude him from any part of them, nor any enter them of their own right, but only by his permission, so long as he is incumbent. When he is inducted, the keys of the church are assigned to him, by the ceremony of laying his hand upon some of them, and all of them are henceforth his property."—(*Redhead* v. *Wait et al.*, 6 *Law Times* [*N. S.*], 580; *Marshall* v. *Andrew*, *Ecc. Gaz.*, *Aug.*, 1871; *Harward* v. *Arden*, *Ecc. Gaz.*, 1867; *Ritchins* v. *Cordingly*, *Law Rep.*, 3 *Adm. and Ecc.*, 113; *Sir R. Phillimore's* "*Ecc. Judg.*," *p.* 134; *Dewdny* v. *Good et al.*, 7 *Jur.* [*N. S.*] 637.)

In the case last cited the Court held that "the church is the Rector's freehold. The key of the church is the property of the Rector, as was long ago decided by Lord Stowell, and must be delivered up by the Church Wardens."

This is unquestionably the English Law on the subject. It is also the general Ecclesiastical Law, and the Law of the American Church to-day. The mind of the Church on this subject, as shown in the earlier part of this chapter, is plainly evidenced in the "Office of Institution," which she set forth as the best substitute that circumstances would permit for the ceremonies of presentation, institution and induction of the English Church.

This Office is analogous to the English "Office of Induction," and the Church, in so framing it, intended thereby to confer upon her Ministers all the advantages and rights granted by the English Office, so far as the circumstances of the country would permit; and by the formal delivery of the keys, as provided for in that Office, she intended to confer the exclusive control of the church, as to its uses, upon the Rector thereof.

The courts have held that the American "Office of Induction," which, as we have shown, is identical with the present "Office of Institution," was intended by the Church as a substitute for the English "Office of Induction," and that she intended therein to confer, so far as was possible, the same rights upon a Rector that are conferred by the English office.—(See *Humbert* v. *St. Stephen's Church*, 1 *Edward's Ch. Rep.*, 308.)

In the "Office of Institution," the Church requires the chosen representative of the Wardens and Vestrymen, in whom, when there is no Rector, is vested the fee and the control of the church edifice, to say: "In the name and behalf of —— Parish (*or* Church), I do receive and acknowledge you, the Rev. ——, as Priest and Rector (*or* Assistant Minister) of the same; and, in token thereof, give into your hands the keys of this church."

This formal presentation of the keys is an act of the deepest significance. They are given absolutely, without any reservation whatever, either express or implied, to the Rector, by the Trustees of the property. And in receiving the keys of the church, the Rector receives the power of exclusive control over the church—"the power of entrance, occupancy and control, of opening and shutting. Where is there any power to take them back, or to impose any limitation upon their use? If there is any existing limitation to this grant of power, if there are any parts of the building which he cannot enter and control at will, the whole solemnity is travestied in this act of delivering the keys."—(Bishop Wilmer's Decision in the Case of *Rector* v. *Vestry of St. John's Church, Mobile, Ala., p.* 76.)

While there can be no doubt about the propriety

and advisability of using the "Office of Institution" throughout the Church, it is to be remembered that this Office confers no powers upon the Rector not already possessed by him before Institution, it is only declaratory of those powers. The delivery of the keys to the Rector is a token of acknowledgment by the Vestry of the Parish or Church, that they have received him as their Priest and Rector, and a formal recognition of his right, *virtute officii*, to the exclusive control of the church buildings. Judge Hoffman ("*Law of the Church*," *p.* 293), in commenting on the effect of the "Institution Office" upon the contracts between Vestries and Rectors, states certain results, which he says "are deducible upon the whole matter." Among these are the following: "That the Institution Office is not essential to give to a Minister any right to the emoluments attending the cure; but such (in the absence of express stipulation) are as recoverable in the civil tribunals without as with it.

"Neither is it necessary, in order to vest the incumbent with that use of, and power over, the church building and precincts which is attendant upon his office, and requisite for its proper performance; that what such power is, may be ascertained from the law of the Church, judicial decisions, and the reason of the thing—that the delivery of the keys has no more legal effect upon this question than the call and an occupation pursuant to it."—(See *Idem*, *p.* 265.)

He also states ("*Ecc. Law*," *p.* 86) "that the call, acceptance and entering upon the duties of a Rector (without any special restrictions agreed upon), as fully establishes the relation between a Rector and the Parish as the Institution Office does."

The courts have uniformly adopted this view.

In *Youngs* v. *Ransom* (31 *Barb.*, 49) the Supreme Court of the State of New York cited and approved the opinion expressed by Judge Hoffman, regarding the use of the Institution Office, as above cited ("*Law of the Church*," *p.* 293). Justice Emmott, in delivering the opinion of the Court, said: "Upon a careful consideration of Judge Hoffman's argument and of his authorities, I entirely concur in his views of the effect of the use or neglect of this particular service."

The conclusions of Judge Hoffman, that the control and possession of the church edifice appertains exclusively to the Rector, and also the English Ecclesiastical Law on this subject, were cited and approved in the important case of *Lynd* v. *Menzies et al.* (33 *N. J. L. Rep.*, 162). This was an action on the case for forcibly preventing the Rev. William J. Lynd, Rector of St. Barnabas' Church in the city of Newark, N. J., from preaching in the church, and occupying the parochial school-house.

In the statement of the case it appears that the Rev. Mr. Lynd accepted a call to the rectorship of the Parish in December, 1861, and in the month of June, 1862, was duly instituted. On the 27th of April, 1867, he received a note from the two Wardens of the Church, notifying him that on Easter Day, which was then past, his connection as Rector of the Church had ceased. On the next day, which was Sunday, when he went to the church to officiate, he found the church closed, and the doors so fastened as to prevent his entering. In a few days afterward he was in a similar manner excluded from the parochial school-house. It was proved, on the trial of the case, that

such expulsions were the acts of the Wardens and Vestrymen of the Church. The jury returned a verdict in favor of the Rector, for one thousand dollars. The case came before the Supreme Court on a motion for a new trial. Chief-Justice Beasley, in delivering the opinion of the Court, says: "What, then, is the agreement into which a congregation of this denomination of Christians enters upon the call of a Rector? So far as touches the matter in controversy, it plainly appears to be this: They offer to the Minister receiving the call such rights in their temporalities as, by the Ecclesiastical Law of their sect, belong to the office which is tendered, one of such rights being that of preaching on Sundays in the church provided by the congregation. Such an offer, therefore, can have nothing to do with the title to the church edifice. No matter in whom the title may reside, if the congregation has the use of the building, the Rector must, of necessity, have the right to partake in such use. . . . But there was a second objection taken on the argument, which was, that on the assumption of the existence of the right of the Rector to the privileges claimed by him, still, it was said an invasion or disturbance of such rights would not constitute the ground of a suit at law.

"I cannot yield my assent to this proposition. The nature of the right in question forbids such a result. I think it is clear that, in right of his office, a Rector, by force of the law of this Church, has either the possession of the church edifice, or has a privilege which enables him to enter into it—such privilege being in the nature of an easement. Mr. Murray Hoffman, in his learned and interesting treatise on the Law

of the Protestant Episcopal Church in the United States, page 266, in remarking on the effect of the incorporation of Churches, states his views in these terms, viz., 'The title, then, to the church and all Church property is in the trustees, collectively, for all corporate purposes; but there is another class of purposes purely Ecclesiastical, as to which the statute did not mean to interfere or prescribe any rule. These are to be controlled by the Law of the Church.' And the conclusion to which he comes is thus stated: 'That the control and possession of the church edifice upon Sundays, and at all times when open for Divine services, appertains exclusively to the Rector.' I have no doubt with regard to the correctness of this view.

"By the English Ecclesiastical Law, which, although somewhat modified by new circumstances and by American usages and statutes, constitutes the substantial basis of the law controlling the affairs of this particular Church, the possession of the church and churchyard is in the incumbent. Nor does it make any difference, in this respect, in whose hands the title to the religious property is lodged, as, for example, in case the freehold to the church and churchyard is in the Rector, nevertheless, the Curate will be deemed in possession for all Ecclesiastical purposes.

"In exemplification of this rule, I refer to an interesting discussion of the question in *Greenslade* v. *Darby*, decided during the present year by the Court of Queen's Bench (*L. R.*, 3 *Q. B.*, 421). 'I quite agree with the former decisions,' such is the declaration of Chief-Justice Cockburn, 'that an incumbent has possession of the churchyard, as well as of the

church, for all spiritual purposes; therefore, for burials and for all purposes attached to his office, he has undoubtedly uncontrolled possession of the churchyard.' To the same purpose is the rule laid down by Cripps, in his treatise on the '*Church and Clergy*,' *p.* 158; see also 1 *Burn's* '*Ecc. Law*,' 377; *Stocks* v. *Booth*, 1 *T. R.*, 428. If, then, we adopt this theory—and I perceive no reason for rejecting it—that for the purposes of the exercise of his sacerdotal functions, the Rector becomes possessed of the church buildings and grounds, it will be difficult to devise any pretext in denial of the right of such officer to a civil remedy if such possession be invaded."

The Rector's right of action was sustained, and the appeal dismissed. This decision of Chief-Justice Beasley was cited and approved in *Livingston* v. *Rector et al.* (45 *N. J. L. Rep.*, 230), in which the Court held: "The English Ecclesiastical Law forms the basis of the law regulating the affairs of the Episcopal Church in this country, and is in force except so far as it has been modified and changed by statute and by the usages and Canons of the Church."

In *Jennings* v. *Scarborough et al.* (56 *N. J. L. Rep.*, 401), the Court, after citing and approving this case of *Lynd* v. *Menzies et al.*, says: "These contractural and property rights are vested in a Rector so long as the Rectorship continues."

In *Batterson et al.* v. *Thompson et al.* (8 *Phil. Rep.*, 251), the Court says: "I quite concur with Chief-Justice Beasley in the remark made by him in the case heretofore cited (*Lynd* v. *Menzies*), when he said: 'No matter in whom the title may reside, if the congregation has the use of the building, the Rector must, of

necessity, have the right to partake in such use'; and, I may add, not only that he may have possession of the building, but that he may of right perform his duties there in that place, and not elsewhere, unless at his own option."—(See also *Humbert* v. *St. Stephen's Church*, 1 *Edw. Ch. Rep.* [*N. Y.*], 308; *Runkel* v. *Winemiller*, 4 *H. & McH.* [*Md.*], 429; *Terrett et al.* v. *Taylor et al.*, 9 *Cranch*, 43; *Cargill* v. *Sewall*, 19 *Me.*, 288.)

The conclusion deducible from these authorities and decisions of the Courts above cited is irresistible, that the possession and control of the church edifice appertains exclusively to the Rector.

The conclusion is also equally clear that the Rector has the exclusive possession and control of all other buildings used by the Church for Ecclesiastical purposes.—(*Humphrey's* "*Law of the Church*," *p.* 34.)

EXCLUSIVE CONTROL OVER THE SERVICES OF THE CHURCH.

The Rector of necessity, and in the very fitness of things, has entire and exclusive control over, and the ordering of, the Divine service of the Church, subject only to the laws of the Church, and to those who "are over him in the Lord." The Wardens and Vestrymen have no control whatever in the matter. The English Ecclesiastical Law is thus stated by Blunt in his "*Book of Church Law*," *p.* 330:

"The arrangements for Divine service are under the absolute control of the incumbent, subject, of course, to the laws laid down in the Prayer Book and elsewhere. It is for him to decide whether there shall be any services beyond the morning and evening, and whether the Holy Communion shall be celebrated at the same

time when Morning Prayer is said, or whether they shall form separate services. The hours of Divine service are also to be fixed by the incumbent. But, above all, it rests with the incumbent to control all those parts of Divine service which are not actually performed by the Clergy." That this is also the law of the American Church will not, I think, be seriously questioned.

A review of the laws governing Parishes, going back to the first authentic records thereof, clearly evidences that at no time, and by no law, has there ever been given to the Wardens and Vestrymen of a Parish, or to any layman, expressly or by implication, the slightest right to interfere in any manner whatever with a Priest-Rector in the "due and lawful exercise of his holy office." He is responsible for the proper discharge of his official duties to the Ecclesiastical Authority of the Diocese alone. The mind and intent of the Church on this subject is clearly set forth in the "Office of Institution," in which she charges the instituted Minister, that he is "faithfully to feed that portion of the flock of Christ" which is entrusted to his care; not as a pleaser of men, nor of the Wardens and Vestrymen of the Parish, but to continually bear in mind that he is accountable to the Ecclesiastical Authority of the Church here, "and to the Chief Bishop and Sovereign Judge of all, hereafter." Upon the Rector is imposed by the Church the sacred trust and bounden duty of bringing all the members of the Parish committed to his care "into that agreement in the faith and knowledge of God, and to that ripeness and perfectness of age in Christ, that there be no place left in them for error in religion or for viciousness of life."

He is possessed of full power to perform "every act of sacerdotal function among his people," and with the performance of those functions no one may interfere in any manner whatsoever, save only the Bishop, and other chief Ministers, who, according to the Canons of the Church, may have the charge and government over him and whom, in the solemn moment of his ordination, he promised "reverently to obey, following with a glad mind and will their godly admonitions, and submitting himself to their godly judgments."

If a Warden or Vestryman, or any layman be tempted to criticise or oppose the ministrations of his Priest and Rector, let him read carefully the Office for the "Ordering of Priests," and the "Office of Institution"; then will he learn, that to the Rector alone has been committed by "the imposition of divinely constituted hands," "authority to execute the office of a Priest in the Church of God," "and to preach the Word, and to minister the holy Sacraments in the congregation, where he shall be lawfully appointed thereunto"; and that no mere distaste for his methods, nor preference for other agencies, will justify him in any course of inaction, or of opposition to the ministrations of the Rector, provided those ministrations be in accordance with the doctrine, discipline and worship of the Church.

The Rector has exclusive direction and control of the Sunday-school of the Parish, the appointment of its officers and teachers, who are his assistants in the work. He is also the head of all Guilds and other educational and charitable associations within the Parish, and which can be formed only with his consent, and are subject to his control.

The right to allow any other Clergyman of the Church, not his Bishop, to officiate in the church edifice, or to minister any office of the Church within the limits of his Parish, belongs exclusively to the Rector. Canon 20 expressly forbids the officiating therein of any person who has not been duly licensed or ordained; but provision is made that the Bishop may permit "Christian men, who are not Ministers of this Church, to make addresses in the Church, on special occasions." This power belongs only to the Bishop, and not to the Rector.

CONTROL OVER THE MUSIC OF THE CHURCH.

The Rector, by virtue of his responsibility for, and control over, the services of the Church, has also exclusive control over, and direction of, the music of the Church.

The English Ecclesiastical Law on the subject is stated by Dr. Blunt ("*Book of Church Law*," *pp.* 330, 331) as follows:

"Above all, it rests with the incumbent to control all those parts of Divine service which are not actually performed by the Clergy. Thus Lord Stowell decided—in a case where the Church Wardens instituted a suit against their Clergyman for obstructing the singing of the school children by introducing the accompaniment of an organ—that 'the Minister has the right of directing the service; *e. g.*, when the organ shall and shall not play, and when the children shall and shall not chant, though the organist is paid and the children managed by the Church Wardens' (*Hutchins* v. *Denziloe*, 1 *Hagg.*, 170). 'They must complain to the

Ordinary if he introduces irregularities into the service.'—(*Wilson* v. *M'Math*, 3 *B. & A.*, 250.)

"In the case of St. George's-in-the-East, the Bishop of London declared: 'The law allows an incumbent to have a choral rather than a read service, if he pleases; and though I may highly disapprove, as I do, of forcing a choral service on an unwilling Parish, I can only remonstrate; I have by law no power of forbidding, or, if I forbid, of enforcing obedience to my mandate.'—("*Ecc. Gaz.*," *Sept.*, 1859.)

"Similar language was uttered at a later date by the Bishop of Lichfield in the case of St. George's, Wolverhampton."—("*Ecc. Gaz.*," *Jan.*, 1870.)

That this is also the law of the American Church, is clearly evidenced by Canon 45, "Of the Music of the Church," which reads as follows: "It shall be the duty of every Minister to appoint for use in his Congregation hymns or anthems from those authorized by the Rubric, and, with such assistance as he may see fit to employ from persons skilled in music, to give order concerning the tunes to be sung in his Church. It shall be his especial duty to suppress all light and unseemly music, and all irreverence in the performance."

This Canon was not enacted for the purpose of imparting authority to the Clergy over the music of the Church; that authority they already possessed, and such possession was in no way questioned. Its purpose was to make *mandatory* upon the Clergy the exercise of the power which was inherent in their office, viz., to "give order" for the regulation of the music of the Church.

It clearly follows that the Rector alone has the

right to say what anthems and tunes shall be sung, when the organ shall and shall not play, when the choir shall and shall not chant or sing, and what parts of the service shall be read and what parts sung. The Wardens and Vestrymen have no authority whatever in the matter. Should the Rector introduce any irregularities into the service, they have no right to interfere, they can only complain to the Bishop.

The custom prevalent in some Parishes, of having a "Committee on Music," appointed by the Vestry, if such committee is given any authority whatever over the music of the Church, is an unlawful infringement upon the rights of the Rector, and is as illogical and as much out of place as the appointment of a committee on sermons would be.

The words of Bishop Wilmer, on this subject, in rendering his decision in the case of "*Rector* v. *Vestry of St. John's Church, Mobile, Ala.*," are so well chosen, and so true, as to deserve their being read by the Wardens and Vestrymen of every Church in the land. In speaking of the relation of the Rector to the Worship of the Sanctuary, he says: "He is, by virtue of his office, the *Celebrant* of Divine worship. That is one of his special functions, conferred upon him in his ordination. That is a part of his inherent prerogative, not to be questioned nor invaded.

"Then, again, we come to consider what relation the musical part of the service bears to the Worship of the Sanctuary. It is, beyond question, with its Anthems and Hymns of Praise and Adoration, together with the accompaniment of Instruments and Choristers, brought in to enliven and stimulate devotion, an integral part of Divine Worship—as essentially so as

the offering of Collects and Litanies. In right views of the musical part of Divine Service, as only a varied part of Worship, will be found the solution of the main question embraced in this present 'Contention.' The bringing in of Organ and Choir alters not a whit the relation of the Clergy to the musical parts of the Worship. All these accessories and accompaniments are brought in to aid and enliven devotion, but the Minister officiating is virtually the *Celebrant*, and is the one leading and responsible person worshipping, in accordance with the recognized principle, '*Qui facit per alium facit per se.*' "

HIS RIGHT TO APPOINT THE ORGANIST AND MEMBERS OF THE CHOIR.

While the Vestry have the right to determine the amount of salary, if any, to be paid to the Organist and members of the Choir, the Rector has the right of appointment. Under the English Ecclesiastical Law "The incumbent, by virtue of his responsibility for, and control over, the services, has the right of saying whether the organ shall or shall not play, and who shall play on it.—(*Wyndham* v. *Cole*, *L. R.*, 1 *P. D.*, 130.)

"The Organist is, in fact, in the same position with regard to the incumbent as are the Choirmen and the Choristers. If there was, as there probably sometimes is, a special endowment for an Organist, the electors, whoever they were, could confer upon their nominee the right to the stipend ; but they could not, as against the will of the incumbent, enable him to play the organ."—(*Blunt's* "*Book of Church Law*," *p.* 297. See also, 1 *Burn's* "*Ecc. Law*" [*Ed.* 1842], 374 *a. b.*)

The provision of the Canon of the American Church, (Canon 45), "That it shall be the duty of every Minister . . . with such assistance as he may see fit to employ from persons skilled in music, to give order," etc., is a direct incorporation of the principles of the English Ecclesiastical Law upon this subject, and clearly recognizes the right of the Rector to the appointment of the Organist and Choristers, the "persons who are skilled in music." As has before been stated, this Canon was not enacted for the purpose of conferring authority in the matter upon the Clergy; only to compel them to exercise the prerogative they already possessed, *virtute officii.* The history of the Canon is, in brief, as follows: In order to "suppress all light and unseemly music, and all indecency and irreverence," in the performance of the services of the Church, which, as early as 1832, seemed to have become only too common, the General Convention of that year passed a "resolution" calling upon the Clergy, not the Vestry, as Bishop Wilmer well says, "to *give order*" for the regulation of the music of the Church. This "resolution" was ordered to be prefixed to the "Collection of Psalms and Hymns," which at that time formed the hymnology of the Church. The "resolution" not having accomplished the desired purpose, the General Convention in 1874 changed the "resolution" to a Canon, making it mandatory upon the Rector of every Parish to exercise his inherent right, and with such assistance as *he*, the Rector, might "see fit to employ, from persons skilled in music, to give order," etc.

Bishop Wilmer, in his "decision" before cited, comments most clearly upon this Canon, and his con-

clusions seem irresistible. He says: "The parties designated as '*skilled in music*' cannot be reasonably supposed to be an unknown and haphazard set of people—legislation takes note of known and recognized parties—but are most assuredly the Choir, and the Organist the chief member thereof. There is no other collection of people in a congregation known as 'skilled in music' but the Choir, and no other collection was in the minds of the Legislators who framed the Canon. This is without doubt the only reasonable interpretation of the language of the Canon."

"The Minister, then, is to employ the assistance needed, and it must be such assistance '*as he may see fit.*' *In a word, he must select the Organist and the Choir.* Any other interpretation, by which the Vestry or any other party should have the selection of 'the persons skilled in music,' would introduce an element of conflicting authority, likely to thwart or be subversive of the authority of the Minister, and tending inevitably to endless discord and confusion."

This testimony of Bishop Wilmer, as to what was the "minds of the Legislators who framed the Canon," is the more important and valuable, as the Bishop was himself one of the "Legislators." Bishop Wilmer also quotes the opinion of the Bishop of Maryland, which is to the same effect. "As to the appointment of the Choristers or Organist, the Canon of the General Convention seems to settle that." [Citing *Title* I., *Canon* 25 (*now Canon* 45), *of the Digest.*] "This places the choice of the persons entirely under his [the Rector's] control and judgment; and the latter part of the same clause seems to give him power even to dismiss. I have always felt that this was absolutely clear."

The late Bishop Stevens of Pennsylvania, who was afterwards also one of the "Legislators" who framed the Canon in question, in giving his decision in a case in his Diocese in 1869, said: "The Rector has the full right to select the Choir."

I submit that the only interpretation of the Canon that is consonant with the well-settled principles of Ecclesiastical Law is the interpretation that has been given by the Bishops of the Church, as above cited, and which recognizes the inherent right of the Rector to appoint the Organist and the members of the Choir. It is the only interpretation which, in my judgment, the courts would place upon the Canon. For it is a well-settled rule of interpretation, as before shown, that such construction must, if possible, be given to a statute as will not be in conflict with the general principles of law; also, that language susceptible of more than one construction must receive that construction which will bring it into harmony with the legislative purpose aimed at, rather than that which will tend to neutralize and subvert the very purpose for which the law was enacted.

It is difficult to see how the right of the Rector to appoint the Organist and members of the Choir, to decide as to the *personnel* of his assistants in rendering the Divine service of the Church, can well be questioned. It is the Law of the English Church; it is general Ecclesiastical Law, and therefore the Law of the American Church. That it is the Law of the Church, is also clearly deducible from our Canons and Offices.—(*Hoffman's "Ecc. Law," pp.* 88, 89; *Humphrey's "Law of the Church," p.* 35.)

It is also clear, that to the Rector belongs the right

to determine as to the character of the Choir; whether it shall be a quartette, or chorus, or vested Choir.

CONTROL OF THE ORGAN.

To the Rector belongs, exclusively, the right to control the organ and to direct its use, at all times and for all purposes.

This right follows, of necessity, from the right of the Rector to the possession and control of the temporalities of the Church.

The English Ecclesiastical Law on this point is explicit. The control of the organ rests with the Rector, and he may direct its use at such times as he sees proper.

In *Wyndham* v. *Cole* (*L. R.*, 1 *P. D.*, 130), Sir Robert Phillimore issued a monition against an Organist for interfering with the Rector's right to control and direct the use and management of the organ, and condemning him in costs.

In *Eyre* v. *Jones* (*Ecc. Gaz.*, *Jan.*, 1870), the Court held, that if "the organ is locked up to hinder it from being used in Divine service, the incumbent has authority to break it open, having entire control over it, whether for use or disuse in any service, at any time, and by whomsoever the Organist may be paid."—(*Blunt's "Book of Church Law," p.* 331.)

The direct question of the Rector's right to the control of the organ came before Bishop Wilmer of Alabama, in the case before cited. (*Rector* v. *Vestry of St. John's Church, Mobile, Ala.*) It seems that a difference had arisen in the said Parish between the Rector on the one hand, and the Wardens and Vestrymen of the Parish on the other, as to their respective rights to

the control and use of the organ, on other and all occasions, than for the "public services, burials and weddings."

The question was submitted by the said parties to the Bishop for his determination in the matter. Before rendering his decision thereon, the Bishop referred the question to the Standing Committee of the Diocese for their advice and judgment. The question received a most exhaustive consideration at the hands of the said Standing Committee, but they were not able to agree as to the respective rights of the parties.

Written arguments on both sides of the question were submitted to the Bishop by several members of the said Committee.

The Bishop, after a due consideration of the question, and of the arguments thus submitted, rendered his decision, which was, in part, as follows: "My determination, therefore, in this contention is this—that there is no reason to be found in Canon Law, or in the alleged absence of Canon Law, in precedent, in usage, or in the general propriety and fitness of things, for limiting the control of the Rector over the Organ, the Organist or the Choir and any of its accompaniments and accessories—all of which enter into the worship of which he is virtually, constructively, and for the most part actually, and by virtue of his office, '*The Celebrant!*' According to the principle already cited—'*Qui facit per alium facit per se.*'"

CONTROL OVER THE ORNAMENTS OF THE CHURCH.

In the absence of any Canon of our own, we must be guided by the Law of the English Church, the general Ecclesiastical Law, in determining who may set up

or place lawful ornaments and decorations in a church, and who may remove any of the same. Dr. Blunt says ("*Book of Church Law*," *p.* 281): "Equally strict is the rule that the Church Wardens have no authority to interfere with any of the ornaments of the church or with any temporary decorations set up there with the consent of the Minister. If they consider any of these to be contrary to Ecclesiastical Law, they may report them to the Bishop in the form of a presentment; but can in no way interfere with them without being liable to a suit in the Ecclesiastical courts, in which proof of such interference (unless, perhaps, in the case of glaringly indecent and irreverent ornaments or decorations which must be removed at once to avoid scandal) would bring condemnation with costs." In *Church Wardens of St. John's Church, etc.*, v. *Parishioners, etc.* (1 *Hagg. Con. Rep.*, 198), the Court held: "The law respecting Church ornaments is now generally understood and settled. The consent of the parishioners is not indispensably necessary unless to charge the Parish with any expense for the support of the ornament after it has been put up. But if there is no such charge incurred, the approbation of the majority of the parishioners is not necessary, nor their disapprobation binding on the Ordinary."

In *Dewdney* v. *Good* (7 *Jur.* [N.S.], 637), the statement of the case shows that the Church Wardens of a Parish, acting upon a resolution of the Vestry, but against the prohibition of the Rector, broke open the door of the church and proceeded to arrange certain of the seats, and to alter portions of the pulpit. The Court held that "all who had taken part in these proceedings had been guilty of a grave offence. . . . The law

on this subject is beyond all doubt or dispute. No man, whoever he may be, has any right to make any changes in the church except the Ordinary and those legally deputed by him.'

The case of *Ritchings* v. *Cordingley* (*Law Rep.*, 3 *Adm. and Ecc.*, 113) is a most important one. From the statement of the case it appears that a ledge or retable had been placed on the Altar of the Parish Church by the order of the incumbent, without the consent of the Ordinary. After the lapse of several months a Vestry meeting was held and a resolution then adopted that the Church Wardens should take steps for removing the retable. On the day after the Vestry meeting one of the Church Wardens forcibly entered the church, pulled down the retable and removed the altar cloth from the Altar. The Court held that the conduct of the Church Warden was clearly illegal, and condemned him in certain costs.

To the same effect are *Marshall* v. *Andrew*, *Ecc. Gaz.*, 1871; *Blake* v. *The Church Wardens of Wetheral*, *Ecc. Gaz.*, *May*, 1874; *Evans* v. *Dodson*, *Ecc. Gaz.*, *Dec.*, 1874.

The law of the Church regarding the right to place ornaments and temporary decorations in a church, and to remove them therefrom, as deduced from the English authorities and decisions on this subject, would seem to be as follows:

First. That the Rector has the exclusive right and control over the placing of temporary decorations in the church or removing them therefrom.

Second. That the Rector, acting with the advice and consent of the Bishop, may place such other lawful decorations and ornaments in the church as he

may deem advisable, without the consent of the Wardens and Vestrymen, or of the parishioners, provided the Parish be not chargeable with the expense of placing them in the church, or maintenance of the same.

Third. That the Wardens and Vestrymen, or any of the parishioners, have no right to place any decorations or ornaments in the church without the consent of the Rector.

Fourth. That decorations, other than temporary decorations and ornaments, once placed or set up in a church, may not be removed therefrom except with the joint consent of the Rector, Wardens, and Vestrymen, or by order of the Bishop of the Diocese. It seems to be the better opinion that the Bishop's consent is also necessary to the removal of any permanent ornaments, or, at least, that they may not be lawfully removed against his express objection.

As the church edifice and all its appurtenances are designed for promoting the spiritual welfare of the Parish, that the Rector, subject to the Canons, rubrics and ordinances of the Church, and the godly admonitions and judgments of his Bishop, should have complete control over, and the right to direct the management thereof, in such ways as may seem to him best suited to subserve the spiritual welfare of those committed to his care, is, in my judgment, clear and uncontrovertible.

It may also be stated, as a rule of law, that things once given to a church, or placed therein for permanent use or ornamentation, thereby become church goods, and may not be removed by the donor.—(1 *Burn's "Ecc. Law," p.* 376.)

RIGHT OF RECTOR TO REPEL FROM THE HOLY COMMUNION.

Canon 40, Section ii., of the Digest, provides that when a person who has been repelled from the Holy Communion under the rubrics, shall appeal to the Bishop, it shall be his duty to restore him, or cause an inquiry to be made.

The Rubric herein referred to is prefixed to the Order for the Holy Communion, and reads as follows: "If among those who come to be partakers of the Holy Communion, the Minister shall know any to be an open and notorious evil liver, or to have done any wrong to his neighbours by word or deed, so that the Congregation be thereby offended; he shall advertise him, that he presume not to come to the Lord's Table, until he have openly declared himself to have truly repented and amended his former evil life, that the Congregation may thereby be satisfied; and that he hath recompensed the parties to whom he hath done wrong; or at least declare himself to be in full purpose so to do, as soon as he conveniently may.

"The same order shall the Minister use with those betwixt whom he perceiveth malice and hatred to reign; not suffering them to be partakers of the Lord's Table, until he know them to be reconciled. And if one of the parties, so at variance, be content to forgive from the bottom of his heart all that the other hath trespassed against him, and to make amends for that wherein he himself hath offended, and the other party will not be persuaded to a godly unity, but remain still in his frowardness and malice, the Minister in that case ought to admit the penitent person to the Holy Communion, and not him that is obstinate.

"*Provided*, that every Minister so repelling any, as is herein specified, shall be obliged to give an account of the same to the Ordinary, within fourteen days after, at the farthest."

The Canon above cited (Canon 40) also provides that when the Minister shall have laid information before the Bishop according to the provisions of the Rubric (the Rubric above cited), the Bishop need not necessarily institute an inquiry, unless the party repelled lodge a complaint with him ; in which case, it is made the duty of the Bishop either to restore him, if he deem the cause assigned by the Minister for such repulsion to be insufficient, or to institute an inquiry, as may be directed by the Canons of the Diocese, or, in the absence of any such Canons, to proceed according to such principles of law and equity as will insure an impartial decision.

The Canon also provides that no Minister shall be required to admit to the Sacraments a person so refused or repelled, without the written direction of the Bishop.

It further provides that the Sacraments shall not be refused in any case to a penitent person at the point to die.

The Rubric of our Prayer Book regarding repulsion from the Holy Communion is almost a literal reproduction of that in the English Office, which is a part of the Statutes 2 and 5 Edward VI., and 13th, 14th, Charles II.

The 26th, 27th, and 109th Canons of 1603 are obviously founded upon the rubric, and require the presentment of the offenders. In the 27th Canon it is provided " that every Minister so repelling any, as is speci-

fied either in this or in the next precedent Constitution, shall, upon complaint, or being required by the Ordinary, signify the cause thereof unto him, and therein obey his order and direction."

Statute 13, 14 Charles II., added a passage to the rubric, making it mandatory upon the Minister within fourteen days, to make the presentment required by rubric to the Ordinary, who was required to proceed to punish as directed by the Canon. The 109th Canon provided that such offenders were to be presented to the Ordinaries "to the intent that they, and every of them, may be punished by the severity of the laws, according to their deserts; and such notorious offenders shall not be admitted to the Holy Communion till they be reformed."

Dr. Wheatly ("*On the Common Prayer*," *pp.* 269, 270) states the law in the English Church. After showing that the law clearly distinguishes between absolutely excluding a person from the Holy Communion as a judicial act, and merely repelling or suspending a person until the Minister can lay the case before the Bishop for his decision, and that the rubric cannot be understood as giving any power to the Minister to act judicially in the matter, he quotes St. Augustine as to the practice of the Church, which quotation is, in part, as follows:

"We cannot repel any man from the Communion unless he has freely confessed his offence, or hath been accused and convicted in some Ecclesiastical consistory or secular court."

"That all this plainly refers to the power of seclusion from the Communion *judicially*, and with *authority;* whereas the design of this rubric is only to enable the

Curate to refuse to administer to any of his congregation (of whose ill life and behaviour he has received sudden notice) till he can have an opportunity of laying his case before the Ordinary.

"Whom, in the meanwhile, the Curate is empowered by this rubric (which is itself a law, being established by the Act of Uniformity) to refuse the Communion if, after due admonition to keep away, he obstinately offers himself to receive. That this is no novel power is plain from the practice of the ancient Church; in which, though all open offenders as soon as known were put under censure, yet if before censure they offered themselves at the Communion, they were repelled."

The Law of the English Church relative to the power of the Minister to repel persons from the Holy Communion seems clear and beyond controversy. His power is only suspensory, and in every case, when he repels a person from the Holy Communion, he must, within fourteen days, give notice to the Bishop, who alone can act judicially and with authority in the matter.

As Judge Hoffman says ("*Law of the Church*," *p.* 438), in commenting on the English rubric and Canons: "This power is vested in the first instance in the Minister, but only to be exercised in the cases specified, and subject to the Bishop's revision; and the understood construction of the English rubric is, that admonition must be first resorted to."

That this is also the Law of the American Church cannot, I think, be questioned.

Under the Rubric prefixed to the Order for the Holy Communion in the American Prayer Book, which, as has before been shown, is substantially identical with

the English Rubric, a Minister repelling a person, as specified in the Rubric, "*shall be obliged* to give an account of the same to the Ordinary, within fourteen days after, at the farthest."

It is difficult to understand how clearer and more explicit language could possibly have been used. It leaves *no discretion* whatever in the matter to the Minister. If he repels any one from the Holy Communion, he *must*, "within fourteen days after, at the farthest," report such repulsion to the Bishop. His power, as Judge Hoffman well says, is only suspensory, and his rectorial jurisdiction limited. He cannot pass judgment upon the offender; he can only, like a committing magistrate, make a presentment of him to a higher Court, the Bishop of the Diocese, who, *virtute officii*, alone can act judicially and with authority in the matter.

Nor can a Minister set up qualifications of his own dictation, such as the refraining from certain amusements, or the neglect to do certain things enjoined by the Minister, but not made compulsory by the Church. The grounds of repulsion are set forth in the Rubric, the first of which is, "to be an open and notorious evil liver."

Wheatly, in the passage before referred to, defines as notorious evil livers, "such as the sentence of the law hath, either upon their own confession or full conviction, declared so to be."

The next ground of repulsion is, when any "have done any wrong to his neighbours by word or deed, so that the Congregation be thereby offended." The Rubric also provides that the Minister shall use the same order with those "betwixt whom he perceiveth malice and hatred to reign."

The Rubric further provides that if one of the parties, so at variance, is willing to forgive and make amends, and the other is not, then the Minister ought to admit the penitent person to the Holy Communion, and not him that is obstinate.

Should a minister so far violate the law as to repel any one from the Holy Communion for causes obviously other than those that are determined by Rubric, it would be the duty of the Bishop to restore the person so repelled, either upon the presentment of the Minister, or upon the complaint of the party repelled, and also to admonish the Minister so repelling. And should a Minister repelling any from the Holy Communion, neglect or refuse to give an account of the same to the Bishop, as provided by the Rubric, it would undoubtedly be such a violation of the Law of the Church as to subject him to discipline.

The power of a Minister to repel a person from the Holy Communion in a case where the "wrong done to a neighbour by word or deed" was a personal wrong to the Minister himself (assuming the congregation to be offended), as, for instance, in the case of a slander uttered against himself, has been questioned. In a case occurring in the Diocese of New York in 1833, cited by Dr. Hawks ("*Con. and Can.*," *p.* 369), Bishop Onderdonk decided that Ministers could not exercise the power of repulsion "in cases of differences or disputes in which themselves or families are parties," and he restored the communicant who had been so repelled.

In commenting on this case, Judge Hoffman ("*Law of the Church*," *p.* 454) doubts the correctness of the Bishop's judgment, and says with great force: "The rejection is warranted by the language of that clause

of the Rubric, 'doing wrong to a neighbour by word or deed.' There is no other redress open to an assailed and calumniated Minister within the discipline of the Church; and if he may not repel, the shocking scene may be exhibited of the reviler receiving the emblems from one he has slandered, and the reviled administering them, while the feelings of resentment and dislike are struggling for sway in his bosom."

I do not see how the conclusion of Judge Hoffman can well be controverted.

While it seems clear that the Minister has the power to repel in such a case, he should exercise it only in extreme cases, and undoubtedly, as Judge Hoffman says, there should be some restriction placed upon the exercise of the right in such a case, and a canonical regulation of the matter might be advisable.

RIGHT TO APPOINT ASSISTANT MINISTER.

To the Rector alone belongs the right of appointing an Assistant Minister.

It is the right of the Vestry to determine the amount of salary that shall be paid to the Assistant Minister and for what term he shall be employed; it is the right of the Rector to choose and appoint such Assistant.

An Assistant Minister in the American Church answers, in general, to a Curate in the English Church, who is appointed by the incumbent, and nominated to the Bishop, who, if satisfied that he is properly qualified, grants him a license and authority to perform the office of Curate in the Parish to which he has been appointed.—(*Blunt's "Book of Church Law," pp.* 217, 222.)

That the Vestry have no power to appoint as Assistant Minister any Minister whom they may choose,

is very clearly shown by Section iv. of Canon 16 of the Digest, which forbids any Minister of the Church to officiate in any manner within the parochial cure of another Clergyman, unless he have received express permission for that purpose from the Minister of the Parish. The Church does not permit the Wardens and Vestrymen to say a word authoritatively on the matter, unless the Rector be absent from the Parish. She recognizes as sacred the principle that the Clergyman in charge of a cure is responsible to God for the fidelity with which he instructs the people of his cure, and that as man cannot release him from this responsibility, man should not interfere to prevent him in acting up to his responsibility. Therefore she declares that he "shall not be interfered with in the discharge of his spiritual functions among his people." She will not permit her Clergy to interfere; much more will she not permit her laity to interfere.—(*Hawks'* "*Con. and Can.*," *p.* 281.)

It has already been shown that the Rector has the sole and exclusive right to appoint his lay assistants, and the principles involved therein apply with equal force to his right to appoint his clerical assistants.

An Assistant Minister has no right, *virtute officii*, to be present at meetings of the Vestry, or to preside at such meetings in the absence of the Rector, except where special provision to the contrary is made in the Church Charter.

THE RECTOR'S DUTIES.

The duties of a Rector are well expressed in the Office of "Ordering of Priests," wherein he solemnly promises that he will give "faithful diligence always so

to minister the Doctrine and Sacraments, and the Discipline of Christ, as this Church hath received the same, according to the Commandments of God."

As Judge Hoffman well says ("*Ecc. Law*," *p.* 87), "The vow of the Rector becomes the right of the congregation." They would never have called him to be their Rector, save for the promises and vows he made upon his ordination to the Priesthood. So far as he forgets, or proves recreant to those promises and vows, so far does he violate the rights of his congregation. At the time of his call, he was believed to be "a devout man, called of God to his office, sufficiently learned for his work, under willing obligations as to belief and public ministrations, solemnly set apart to certain duties, and clothed with certain spiritual powers and rights, and with Divine authority." He ceases not to be a Priest by becoming a Rector, nor can any Parish, by calling him to be their Rector, exonerate him from his covenant vows and obligations. To the Church of Christ he is bounden "to make full proof of his ministry, according to his covenant, and, to that one Parish in particular, to make that proof just there."

Not only is he to give faithful diligence to the ministration of the Doctrine, Sacraments and Discipline of the Church, according as she hath received the same; not only to teach the people committed to his care to keep and observe the same; not only to maintain and set forward, so far as he may be able, quietness, peace and love among his people; but also with all faithful diligence to drive away from the Church all erroneous and strange doctrines that are contrary to God's Word, and to remember the duty of honorable deference to the Bishop, submitting to his godly

admonitions and judgments in all things where he may lawfully counsel.

"And when, under changed convictions, he can no longer live according to his covenant, a good conscience and the law of honor will lead him to make the sacrifice which every honest man has to make towards societies, brotherhoods, guilds, and churches, whose obedient officer or member he can no longer remain, viz., to go out by the door ever open to honest convictions and to courage sufficiently noble to act up to them."

CHAPTER VI.

OF WARDENS AND VESTRYMEN.

THE Canons of the General Convention repeatedly refer to Wardens, and in every Diocese they are recognized as forming a necessary constituent part of the Church organization; but we must look to the English Ecclesiastical Law if we would rightly understand the duties of Wardens, or Church Wardens as they are called in the English Law, and also in some Dioceses in this country.

By the 18th, 19th, 85th, 88th, 90th, 109th, 110th, 111th and 112th of the Canons of 1603, the Church Wardens or questmen are to enforce reverence and attention during Divine Service, to prevent loiterers or idle persons from frequenting the churchyard or porch during such service, to keep peace during any meeting of the congregation, to take care that excommunicated persons be kept out of the church, to see that the churches be kept from profanation, and, in the visitations of Bishops and Archdeacons, to present the names of persons so offending, as well as the names of all schismatics, non-communicants at Easter, and all persons guilty of notorious crimes and scandals.

Canons 80, 81, 82, 83, 84 (1603), make it the duty of the Church Wardens to provide "Things Appertaining to Churches," such as the "Great Bible" and Book of Common Prayer, a Font of stone for Baptism, a decent Communion Table, a Pulpit and a Chest for Alms, in every church.

Canon 85 makes it the duty of the Church Wardens to see that the churches are kept well and sufficiently repaired.

Canon 20 makes it the duty of the Church Wardens of every Parish, with the advice and direction of the Minister, to provide the bread and wine for the celebration of the Holy Communion.

Canon 28 makes it the duty of the Church Wardens, as well as of the Minister, to mark whether the Communicants of the Parish come to the Holy Communion at least three times in each year, of which Easter shall be one.

Canon 50 makes it the duty of the Church Wardens, as well as the Ministers, to see that strangers are not admitted to preach without showing their license.

Blunt, in speaking of the "Office of Church Warden," says ("*Book of Church Law*," *pp.* 254, 255):

"The name of these Parochial Officers is derived from one of their duties, that which was originally the only duty belonging to the office—*i. e.*, the custody or guardianship of the church property belonging to each Parish. In later times, other duties accumulated upon Church Wardens, so that they have become *ex-officio* synodsmen or 'sidesmen'—the proper lay representatives of their parishes at Synods or visitations."

In a note he cites Ayliffe (*Paregon*, *p.* 516) as authority for the statement that "The office of Church Warden, as guardian of the goods of the church, dates from the later part of the middle ages, when the duty of providing for the repairs of the nave and of furnishing the utensils for Divine Service finally settled on the parishioners. The synodsmen are of much more ancient date, being derived from the custom

observed at Episcopal Synods of calling upon certain grave laymen of the Diocese to report on oath to the Bishop respecting its moral condition."

In speaking of the "Duties of Church Wardens," he says (*Idem, pp.* 263, 264, 265): "It has already been mentioned that the office of Church Warden comprehends two distinct classes of functions and responsibilities. The first of these relates to the material fabric and goods of the church, of which those appointed to the office are guardians; the second relates to the oversight of the clergy and laity of the Parish in respect to their observance of, and obedience to, the Ecclesiastical Laws. It should be remembered that only in certain specified cases have they authority to act, and that in all others they have only authority to present, *i e.*, make a formal report to the Ordinary, leaving to him the responsibility of acting or not acting upon their presentments. The distinction between these two classes of functions requires to be carefully kept in view, as the neglect of it has involved Church Wardens in heavy pecuniary penalties in the shape of costs inflicted by the Ecclesiastical Courts.

"The active duties of the office are chiefly those of providing necessaries for Divine Service, maintaining order during its performance, keeping the church and its accessories in proper condition, and taking charge of the benefice during vacancies. This last duty is not, however, thrown on them by the mere fact of their appointment, but by the act of the Ordinary, who usually chooses them for this office, and commits it to them by a formal instrument of sequestration.

"Whatever is needed for use in the services of the Church was, by the old Ecclesiastical Law, to be pro-

vided, at the cost of the parishioners, by the Church Wardens. When a church is once erected and properly furnished, these current necessaries are, indeed, very few. They may be stated as chiefly consisting of the vestments of the officiating clergy, the bread and wine required for use in the Holy Communion, the lights necessary for Evening Service, together with the salary of the parish clerk, the organist (when there is one), and the attendant or attendants required for the orderly use of the church by the Minister and the congregation."

In speaking of the "*Duties during Divine Service*" of Church Wardens, he says (*Idem*, *pp.* 265, 266): "The only act by which Church Wardens officially take part in Divine Service is that of collecting the alms of the congregation, and bringing them to the Priest for presentation upon the Altar. Even this is not essentially their duty, as the rubric names 'the Deacons, Church Wardens, or other fit persons appointed for that purpose'; but where the Deacons do not collect them, no fitter persons can be found than the representative men of the lay parishioners, especially as they have authority in their distribution; for by the rubric at the end of the Communion Service, 'After the Divine Service is ended, the money given at the Offertory shall be disposed of to such pious and charitable uses as the Minister and Church Wardens shall think fit. Wherein if they disagree, it shall be disposed of as the Ordinary shall appoint.'"

He also refers to the Canons making it the duty of the Church Wardens, personally, or by their deputies, to maintain order during Divine service, and says (*Idem*, *p.* 266): "It has been repeatedly ruled that

Church Wardens are authorized, *ex-officio*, to carry out the principles set forth in these Canons, by doing what they can to prevent disorder or interruption of Divine Service; and that if no other means avail, they are empowered to turn the offender out of the church, provided they use no unnecessary violence in doing so."—(*Reynolds* v. *Monkton*, 2 *M. & R.*, 384; *Williams* v. *Glenister*, 2 *Barn. & Cress.*, 699; *Burton* v. *Henson et al.*, 10 *Meison & Welsby*, 104.)

In regard to the assignment of seats to parishioners, he says (*Idem*, *pp.* 268, 269): "Associated with the duty of keeping order in church is that of seeing that the parishioners are provided with seats in an orderly manner. This duty devolves upon the Church Wardens as officers of the Ordinary, whose authority in the matter is final. By the Common Law every parishioner is entitled to a seat in his Parish Church, and in 1841 Baron Rolfe expressed his opinion 'that the Church Wardens have a right to exercise a reasonable discretion in directing where the congregation shall sit,'—even to the extent of removing a person from one seat to another if thought more convenient, and done without unnecessary force."—(*Reynolds* v. *Monkton*, 2 *M. & R.*, 384.)

"In 1887, Mr. Justice A. L. Smith held that in a Church where all the seats were free, it was 'well within the scope, power, and authority of Church Wardens to direct where a certain class shall go, and a certain class shall not go.' In that case the Church Wardens were seeking to prevent all the young men from sitting together. (*Asher* v. *Calcraft*, *L. R.* 18 *Q. B. D.*, 607.) In *Taylor* v. *Timson* (*L. R.* 20 *Q. B. D.*, 671), Mr. Justice Stephen held that a Church Warden

had no right to exclude any parishioner from church on the ground that there was not sitting room for him. Whether the assignment of seats is made as a yearly arrangement, whether it is made at the time when Divine Service is about to be or is being celebrated, or whether the power to make it is only used in disputed cases—the seats being ordinarily considered free, and open to the first comer—are matters entirely within the discretion of the Church Wardens, subject to the control of the Ordinary."

In regard to "*The Care and Repair of the Church and its Accessories*" he says (*Idem, pp.* 270–72): "The movable goods of the Church are, by the Common Law, vested in the Church Wardens, as a quasi corporation (for the benefit of the parishioners at large), whose continuity is preserved notwithstanding the annual change in the persons constituting it. (*Rex* v. *Martin Rice*, 1 *Lord Raym.*, 138; *Jackson* v. *Adams*, 2 *Bingh. N. C.*, 402.) . . . In the same capacity, they are responsible for the good preservation of the church fabric, the churchyard, and the church goods; the chancel being mostly excepted, as the responsibility for its preservation and repair rests upon the Rector. As regards the church and churchyard, these duties are laid down in the 85th Canon of 1603, which enacts that 'The Church Wardens or questmen shall take care and provide that the churches be well and sufficiently repaired, and so from time to time kept and maintained, that the windows be well glazed, and that the floors be kept paved, plain, and even, and all things there in such an orderly and decent sort, without dust, or anything that may be either noisome or unseemly, as best becometh the house of God, and is prescribed in an homily to that effect.

The like care they shall take that the churchyards be well and sufficiently repaired, fenced, and maintained with walls, rails, or pales, as have been in each place accustomed, at their charges unto whom by law the same appertaineth ; but especially they shall see that in every meeting of the congregation peace be well kept, and that all persons excommunicated, and so denounced, be kept out of the church.'

"This will include whatever is permanently affixed to the freehold—such as walls, fences, windows, gates and doors, roof, floor, drains, stoves and flues, etc.; and also the font, pulpit, and seats, together with everything that can be reasonably considered as substantially part of the building and its appurtenances. . . . The movable goods of the church, which the Church Wardens are bound, on behalf of the parishioners, to preserve and repair, consist of such things as are absolutely enjoined for use in Divine Service, and of other things which have been in use from time immemorial, or have been accepted by them for the use of the church. Of the first class are the vestments of the Ministers, the sacred vessels and other furniture of the altar, with the books used in Divine Service. Of the second class are the organ, the bells, the bier, the clock, the vestry furniture, and such like—all of which are used for the advantage of the parishioners, and ought therefore to be kept in order by them."

Such in brief is the law regulating the rights and duties of Church Wardens in the English Church, and such, I apprehend, with the exception of property rights, which here belong to the Vestry in their corporate capacity, constitutes the basis of the law regulating the rights and duties of Church Wardens and

Wardens in the American Church, on the principle that the law of the English Church continues to be the law of the American Church, so far as it is applicable to our circumstances, and not superseded by enactments of our own.

The Church has never yet legislated upon this subject (with the exception of a few Dioceses, which have simply recognized by canonical enactment some of the principles of the Canons of 1603), and her neglect or refusal to so legislate evidences the mind of the Church that the rights and duties of Church Wardens and Wardens should remain the same as in the English Church, so far, of course, as they are applicable to our condition and not in conflict with the Statute Law of the land.

A further evidence that such was the mind of the Church is the report made by the Rev. Dr. Croes—afterwards Bishop of New Jersey—in conjunction with the Rev. Andrew Fowler, to the Convention of that Diocese in 1804, which went very thoroughly into the subject; so much so that Bishop Doane, his successor in the Bishopric of New Jersey, spoke of it "as embodying the whole practical wisdom on the subject."

This report received the endorsement of Judge Hoffman in his "*Law of the Church*" (*pp.* 267, 270), and was cited by *The Joint Committee on the Function of Rector, Wardens, and Vestrymen, etc.*, in their report to the General Convention of 1880, as presenting "the duties of Church Wardens in a clear manner." They also remark that while some of the requirements have become inoperative and useless, yet "the general drift of them still remains in force."

The report to the New Jersey Convention of 1804 is as follows:

"*The duties of Church Wardens are:*

1. To provide for the churches of which they have the care a Prayer Book and Bible of suitable size, at the expense of the Parish.
2. To make the collections which are usual in the Parishes.
3. To provide, at the expense of the congregation, a sufficient quantity of fine white bread, and good, wholesome wine, for the celebration of the Lord's Supper.
4. To provide a proper book, at the charge of the Parish, in which shall be written by the Rector, or in case of vacancy, by one of the Wardens, the name of every person baptized, married and buried in the church, and the time when such baptism, marriage and burial took place.
5. To present to the Bishop of the Diocese, or, if there is no Bishop, to the Chairman of the Standing Committee of the Church in the State, every Priest and Deacon residing in the Parish to which they belong, who has voluntarily relinquished his sacerdotal office, and uses such employments as belong to laymen.
6. To take care that the church of which they have the charge be kept in good repair, well glazed and free from dirt and dust, as becomes the House of God; that the churchyard be decently fenced, and to cause that order be preserved during Divine Service.
7. To diligently see that the parishioners resort to church on Sundays, and there continue the whole

time of Divine Service; and to gently admonish them when they are negligent.

8. To prevent any idle persons continuing in the churchyard or porch during Divine Service, by causing them either to enter the church or depart —and to prohibit the sale of anything in the yard.
9. To give an account to the Corporation of the Church, if it has no Treasurer, at the expiration of each year, of the money they have received, and what they have expended in repairs, etc.; and when they go out of office, to give a fair account of all their money transactions relative to the Church, and deliver up to their successors the church property in their possession."

This report most obviously embodies the main provisions, either in whole or in part, of the 18th, 19th, 20th, 76th, 80th, 85th, 88th, and 90th, of the Canons of 1603.

Dr. Richey, in "*The Churchman's Handbook*" (*pp.* 28, 29), says:

"The 'Church Wardens,' as their name indicates, are the guardians and keepers of the church, under the Rector, and representatives of the body of the Parish. They are to see to the church being kept in good repair, and are to preserve order and decorum in and around the church building during the time of Divine Service. It is made their duty to provide a proper Record Book for the Parish, and to cause to be copied therein all documents bearing on the organization and history of the Parish; they are to collect and present the alms and contributions made in the church. In the event of a vacancy in the Rectorship, the Wardens are the keepers of the Record Book, and they are to

present to the Bishop the report called for by Canon at the time of the Annual Convention."—(See also *Hoffman's "Ecc. Law," pp.* 90–92.)

In the absence of any law, statutory or canonical, regulating the duties of Wardens, it seems clear that the provisions of the Canons of 1603, except where they are obviously inoperative or useless, are still of force in the American Church.

The General Convention has also made it the duty of the Wardens to give notice to the Bishop of the election of a Minister to the Rectorship of a Parish; to give a certificate of transfer to a communicant of the Church removing from the Parish, in case there be no Rector thereof; and to collect, or cause to be collected, the alms of the congregation in time of Divine service; it is also made the duty of the Senior Warden, at the time of the institution of a Rector of the Parish, to present the keys of the church to the new incumbent, and to receive and acknowledge him in the name and behalf of the Parish, as its Rector.

QUALIFICATIONS OF WARDENS.

The qualifications required for the office of Warden have already been sufficiently commented upon in a previous chapter. With very few exceptions the various Dioceses require that a person must be a communicant to be eligible for the office of Warden. The grave and responsible duties devolving upon a Warden should certainly never be committed to one who is not a communicant of the Church.

HOW APPOINTED.

The mode of election or appointment of Wardens varies in the different Dioceses, and is governed by

the Statute Law of the State, or the Canon Law of the Diocese.

In some Dioceses both Wardens are elected by the qualified voters of the Parish ; in others by the Vestry, from among their own number ; in others, the Rector has the right to appoint one Warden, and the Parish or Vestry, as the law may provide, elects the other; in still others, the Rector nominates one Warden, and the Vestry elect both Wardens.

In the English Church, the ordinary law by which the appointment of Church Wardens is regulated is that of the 89th Canon (1603): "All Church Wardens or questmen in every Parish shall be chosen by the joint consent of the Minister and the parishioners, if it may be; but if they cannot agree upon such a choice, then the Minister shall choose one, and the parishioners another, and without such a joint or several choice, none shall take upon them to be Church Wardens ; neither shall they continue any longer than one year in that office, except perhaps they be chosen again in like manner."

The common custom is for the incumbent to choose one Warden, and the parishioners the other.—(*Blunt's "Book of Church Law," p.* 258.)

The joint Committee on the Functions of Rector, Wardens, and Vestrymen, etc., in their report to the General Convention of 1880, recommended the enactment of the following amendment to the Canon "Of Congregations and Parishes."

"(2) In every Parish, at the Annual Election, Wardens and Vestrymen shall be chosen as follows:—

The Rector, or Minister in charge, shall choose one Warden, and the Congregation the other.

Vestrymen shall be chosen by the Congregation.

Both Wardens, and a majority of the Vestrymen, shall be recognized Communicants of the Parish.

The qualifications of voters shall be as prescribed by the Conventions of the several Dioceses."

It is certainly more consonant with the long established usages of the Church, and with the general principles of Ecclesiastical Law, for the Rector to appoint one Warden, and the Parish to elect the other. Wardens are usually denominated in the different Dioceses as Senior and Junior Wardens, when both Wardens are chosen by the Parish or Vestry; or Rector's Warden and Parish or Accounting Warden, when one Warden is appointed by the Rector, and the other by the Parish or Vestry.

While the Church has recognized the title of Senior Warden in the "Institution Office," and in the Canons of most of the Dioceses, the name has in it, usually, more of honor than of practical import.

Unless the Statute or Canon Law of a Diocese gives him such right, the Senior Warden has no legal priority of right to preside at a Vestry meeting in the absence of the Rector, although that courtesy is usually extended to him. Under the English Ecclesiastical Law there is no one who is *ex-officio* entitled to preside at a Vestry meeting, in the absence of the Rector, but a Chairman must be elected by those present.—(*Blunt's "Book of Church Law," p.* 300.)

While many of the Dioceses provide by Canon for the appointment or election of a Senior Warden, others, though recognizing in their Canons the title of Senior Warden, simply provide for the election of two Wardens, without designating which of such Wardens shall

be called the Senior Warden. In such cases it is the general custom to denominate the Warden first chosen, or whose name stands first on the ticket or ballot, as the Senior Warden, but there is no other authority, save custom, for such designation in those Dioceses where no provision is made for the appointment or election of a Senior Warden.

BOTH WARDENS MUST ACT.

Unless the Wardens are expressly authorized to act separately, they must act together, in order to perform a valid act. This is also the English rule. (*Blunt's "Book of Church Law," p.* 270, *note*, citing 1 *Rol. Abr. Chev.*, 393; *Starkey* v. *Barton*, *Cro. Jac.*, 2 4. See also *Prideaux's "Church Warden's Guide," p.* 335.) This, of course, does not prevent a Warden from exercising such powers as may be specially delegated to him by the Rector, or by the Vestry, or as may be consented to by the other Warden. In many of the Dioceses the Canons provide that the Senior Warden shall preside at meetings of the Vestry in the absence of the Rector.

In the Dioceses of Delaware, Ohio, and Southern Ohio, the Canons provide that in the absence of the Rector, the Senior Warden may call meetings of the Vestry.

In the Diocese of Alabama, the Canons, after specifying that there shall be two Wardens in each organized Parish, who shall always be communicants, not under repulsion, provide that "they shall be distinguished as Senior and Junior, although all duties belong equally to both; for every duty which may be assigned to the Senior Warden, devolves, in his absence or disability,

on the Junior, and both shall be held responsible for the performance of the duty."

In the Diocese of Springfield it is made the duty, by Canon, of the Rector's Warden "to look after the personal interests of the Rector, to see that his salary is promptly and fully paid, that provision is made for supplying his place in case of his necessary absence, and generally to do all things that may be necessary to promote his efficiency in the discharge of his duties."

It has already been shown that, in the absence of any express provision in the Statute or Canon Law to the contrary, the presence of one Warden is necessary to constitute a legal meeting of the Vestry.

In the State of New York, the Statute Law (*Chap.* 723 *of the Laws of* 1895) provides that, in order to constitute a quorum of the Vestry, there must be present the Rector, at least one of the Church Wardens, and a majority of the Vestrymen, or the Rector, both Church Wardens and one less than a majority of the Vestrymen. Before the enactment of the Act of 1895, making the above provision for a quorum in case of the presence of both Wardens at a Vestry meeting, the Chancellor of the Diocese of Western New York gave as his opinion in a case submitted to him, that when both Wardens were present at a Vestry meeting, one of the Wardens could be counted as a Vestryman for the purpose of making a quorum.

This rule would doubtless be held to be valid in those Dioceses where the Statute or Canon Law simply provides that the majority, or the "major part" of the whole number composing the Vestry shall constitute a quorum; as, for instance, if a Vestry consisted of a Rector, two Wardens and seven Vestrymen, the

presence of six of such members would be necessary to constitute a quorum of such Vestry. This requirement would be fulfilled by the presence of the Rector, one Warden and four Vestrymen, or the Rector, both Wardens and three Vestrymen.

WARDENS HAVE THE CUSTODY OF THE CHURCH UNDER THE RECTOR.

In order to fulfil their duties relating to the preservation and repair of the church, and in providing the necessaries of Divine Service, it is obvious that the Wardens must have access to the church, but the possession and control of the church being in the Rector, they can have access thereto only with the consent of the Rector. While they have the custody of the church and of its goods, they have such custody only under the Rector.

This is a well settled principle of the English Ecclesiastical Law, and is also the law of the American Church. Blunt (*"Book of Church Law," pp.* 273, 274) lays down the rule as follows: "The whole church and churchyard being vested in the Rector or Vicar, as his freehold, access to either is entirely under his control. . . . In cases where Church Wardens have possessed themselves of duplicate keys, or in any way obtained access to the church, chancel, or belfry, without the permission of the incumbent, they have been severely censured by the judges, ordered to deliver up the keys, and condemned in costs.—(Citing *Redhead* v. *Wait and others*, 6 *Law Times* [*N. S.*], 580; *Dewdny* v. *Good & Ford*, 7 *Jur.* [*N. S.*], 637; *Harward* v. *Arden, Ecc. Gaz., May and Sept.*, 1867; *Ritchings* v. *Cor-*

dingley, Law Rep. 3 *Adm. and Ecc. p.* 113; *Sir R. Phillimore's "Eccl. Judgments," p.* 133; *Marshall* v. *Andrew, Ecc. Gaz., Aug.*, 1871.)

"In all that is done by Church Wardens this plain principle of law should therefore be strictly recognized, and access to the church obtained, by themselves or their deputies, only by the expressed or implied permission of the incumbent. If he refuses it, so as to prevent them from doing their duty, they must complain to the Ordinary."

In the case of *Lee* v. *Mathews* (3 *Hagg. Ecc. Rep.*, 169), Sir John Nicoll says: "The Minister has, in the first instance, the right to the possession of the key, and the Church Wardens have only the custody of the church under him. If the Minister refuses access to the church on fitting occasions, he will be set right on application and complaint to higher authorities."

"A spiritual Rector has, when inducted, the corporal possession of the church for the use of the parishioners, subject to the control of the Ordinary."—(*Griffith* v. *Dighton & Davis*, 33 *L. J., C. L.* [*N. S.*], 29.)

While the possession and control of the church buildings belong to the Rector, yet are they confided to him for certain well defined purposes; and for these purposes he is bound to give access.

He must give access to the church for such duties as devolve upon the Wardens, with respect to the care thereof, and the providing of the necessaries for Divine service.—(*Blunt's "Book of Church Law," pp.* 327, 328.)

The relative rights of Rector and Wardens to the custody and control of Church buildings are more

fully considered in the preceding chapter, under the Rector's "Right to the Keys and Control of the Church and other Parish Buildings," to which reference may be had for the decisions of the American Courts on this subject.

VESTRYMEN.

In England, except in cases of special customs, there was formerly no separate body of the parishioners known as a Vestry. All the parishioners when duly convened for Parish purposes were described as assembled in Vestry. In a few Parishes, especially in the city of London, there existed, by custom, a representative body called a "Select Vestry." "These Select Vestries, as a general rule, entirely supersede the ordinary Vestry. In large towns select Vestries may be appointed under the Act 1 and 2, Will. IV., ch. 60." —(*Blunt's "Book of Church Law," p.* 303.)

The name Vestry is derived from the former custom of the parishioners to meet for the transaction of parochial business in the room where the Clergyman put on his vestments, called the Vestry. In the Colonies the method of the parishioners acting through a select delegated body was used from a very early date. In New York, for example, by the Duke of York's laws of 1664, it was provided that eight of the most able men of each Parish should be chosen by the major part of the householders as overseers for the orderly management of the parochial affairs of the Parish, out of which numbers should yearly be chosen the two Church Wardens. So in Virginia, Vestries were part of the Church organization at a very early date.—(*Hoffman's "Law of the Church," pp.* 271, 272.)

In Maryland, by an Act of 1692, the freeholders of each Parish were to meet and appoint six Vestrymen. The Vestrymen were also made bodies corporate to receive and hold property, with power to fill all vacancies. (*Hawks'* "*Eccl. Cont.*," *Vol.* II., *pp.* 71, 72.) In nearly all of the Charters granted to Colonial Churches provision is made for the election of a certain number of Vestrymen.

It is obvious that the Vestry system of the Colonial Church, and hence of the American Church, was modelled after the Select Vestries of the English Church.

QUALIFICATIONS OF VESTRYMEN.

The qualifications of Vestrymen have already been commented upon in a previous chapter, and, as was then stated, they differ very materially in the different Dioceses. In some States the qualifications for the office of Vestryman are prescribed by Statute, in others, the Statute is silent in the matter, or else provides that they shall be conformable to the requirements of the Church or of the Convention of the Diocese to which the Parish choosing them belongs.

Vestrymen have no separate or individual power, and can only act in Vestry assembled. (*Appeal of Rittenhouse, etc.*, 21 *At. Rep.*, 254; *People's Bank* v. *St. Anthony's Church*, 109 *N. Y.*, 512; *United Brethren, etc.*, v. *Vandusen*, 37 *Wis.*, 54; 1 *Morawitz on Corp.*, *Sec.* 531; 1 *Waterman on Corp.*, *Sec.* 70.) One exception to the above rule should, however, be noted. It has been decided (*Beckett* v. *Lawrence*, 7 *Abb. Pr. Rep.* [*N. S.*], 403) that

Vestrymen have power to preserve order, and to remove disturbers during times of Divine Service in the church.

THEIR DUTIES.

The duties of Vestrymen have been well set forth in the report of the Rev. Dr. Croes to the Convention of New Jersey before referred to.

The report in so far as it relates to the duties of Vestrymen is as follows:

"*The duties of Vestrymen, or Trustees, are:*

"To transact all the temporal business of their respective churches—to collect the moneys stipulated to be paid to the Minister; and, at the expiration of any year, if there be a deficiency of the sum requisite, to give information thereof to the congregation, convened for that purpose, and, if necessary, to enforce the payment of the sum deficient; also, in the absence of the Wardens, to do the several duties which are more particularly assigned to them." It may also be stated, that it is the duty of a Vestryman to attend all meetings of the Vestry duly called; should he intentionally absent himself from such meetings, a writ of mandamus will lie to compel him to attend.—(*People ex rel. Kenney* v. *Winans et al.*, 29 *State Rep.* [*N. Y.*], 651.)

Wardens and Vestrymen should ever bear in mind that to the Rector alone, under the Bishop, belongs the administration of the Sacraments, Ordinances, Worship, and all other matters of a purely spiritual character, and that for these duties he was ordained, and by them chosen. They are his lay assistants, and can aid him most effectually in the performance of those duties. As the late Bishop De Lancey, of Western

New York, in a Pastoral Letter well said: "The whole body—Wardens, Vestrymen, and people—may strengthen the hands of the Rector by punctuality in attendance at the sanctuary, by full responses in the services, by devout attention to the instructions of the pulpit, by regularly communicating, by observance of festivals and fasts, by interest in the ordinances administered, and by presenting the uniform example of earnest, devout, holy, and consistent members of the Parish."

SUPPLEMENT.

With

Rules of Order.

RULES OF ORDER.

IT is not the author's purpose to set forth herein a complete manual of parliamentary law, only to give such "Rules of Order" as may be necessary for the proper conduct of Parish and Vestry meetings, with a concise statement of their object, effect, and order of precedence.

If no regular order of business has been adopted for the conduct of Vestry meetings, the following would be a proper order therefor:

1. *Reading of the Minutes of the previous meeting, and approval of the same.*
2. *Report of the Treasurer.*
3. *Reports of Standing Committees.*
4. *Reports of Special Committees.*
5. *Unfinished Business.*
6. *New Business.*

If, for any reason, it should be desired to transact business out of the regular order, a motion should first be made to suspend the rules or order of business, which can only be done by a two-thirds vote.

While all business should be brought before the meeting on the motion of a member thereof, no motion is necessary to receive the report of a committee, unless objection is made to its reception.

Before a subject is properly open to debate, a motion should be made and seconded, and then stated by the Chairman.

The member who offers the motion may modify or withdraw his motion before it has been stated by the Chair, but after it has been so stated he cannot withdraw it, except by unanimous consent, or on a motion for that purpose; nor can he then modify it except by moving an amendment.

After a motion has been stated by the Chairman it is in the possession of the meeting, and may be disposed of, besides being directly adopted or rejected, as follows, and in this order of precedence:

1. *By Objection made to its Consideration.*
2. *By Leave granted to Withdraw the Motion.*
3. *By Being Laid on the Table.*
4. *By Postponement to a Certain Hour or Day.*
5. *By being Committed or Referred.*
6. *By Amendment.*
7. *By being Postponed Indefinitely.*

(1) Objection to the consideration of a motion must be made immediately after the motion has been stated by the Chairman, and before any debate thereon has been had.

It does not require to be seconded and cannot be debated or amended. If sustained by a two-thirds vote, the original motion is disposed of and can receive no further consideration by the meeting. The object of such objection is to prevent any consideration of a question, when such consideration is deemed inadvisable.

(2) Should the mover of a motion desire to Withdraw or Amend his motion, or offer a substitute therefor, he may do so by unanimous consent, or, if that be not granted, by a motion made for that purpose, which must also be put without debate or amendment.

If the motion to Withdraw receive a majority vote, it effects a complete withdrawal of the original motion from the consideration of the meeting.

(3) A motion to Lay on the Table is not debatable, nor subject to amendment in any way, but when made and seconded must be immediately put by the Chairman, unless a motion of a higher order be made, while this motion is pending.

If this motion be carried, the question must lie on the table until a motion be made and adopted by a majority vote to take it from the table.

A motion to Lay on the Table is always in order, so long as the question is before the meeting. The object of this motion is usually for the purpose of defeating the question under consideration, although it may also be made for the purpose of postponing the consideration of the question to some more opportune time, and is so far preferable to a motion to postpone for a definite or indefinite time, in that it allows the question to be considered at any time during either that meeting or a subsequent meeting, whenever a

majority may vote to take it from the table. The effect of the motion is to prevent any further consideration of the whole question until duly taken from the table.

(4) A motion to Postpone to a Certain Time may be made at any time while the question is under consideration, except that it cannot be made while any motion or question of a higher order is being considered; but any one of these motions may be made during the consideration of a motion to Postpone.

The motion to Postpone to a Certain Time may be amended by altering the time to which it is proposed to postpone the question, which time must not be beyond the next regular or adjourned meeting of the Vestry. Only a limited debate is allowed on this motion, and must be confined to the motion itself. The merits of the main question cannot be debated under this motion. The object and effect of this motion is to defer action on the question until the time specified therein, and the question cannot be considered before the time so specified except by a two-thirds vote.

(5) The next motion, in order of precedence, that may be made is a motion to Refer or to Commit, or, if the question has before been committed, to Recommit. This motion is subject to amendment, and the whole question which it is proposed to refer, commit, or recommit to a committee may be debated. The object of this motion is to secure at the hands of a select committee a more careful consideration of the question than is possible to be given to it by the meeting. Its effect is to remove the consideration of the question from the meeting until such time as the committee to whom it was committed or referred report back to the meeting.

(6) The Main Question before the meeting, as well as motions to Postpone to a Certain Time, to Commit or Refer, and to Fix the Time to which to Adjourn, may be amended, and a motion to Amend is debatable.

An Amendment may also be amended, but an "amendment of an amendment" cannot be amended. A Substitute for the original motion may be made, even after a motion to amend an amendment has been offered, and takes precedence over the original motion and the motions to amend.

The question first occurs on the motion to Substitute. If this motion be carried, the substitute takes the place of the original

motion, and the amendments before made or offered to it. If the motion to substitute be not carried, the question then occurs on the amendment to the amendment. If the amendment to the amendment be lost, the question next occurs on the first amendment, or if the amendment to the amendment be carried, on the amendment so amended.

After the substitute and the amendments have been disposed of, the consideration of the main question is in order. If the amendment to the main question be carried, the question must be put by the Chairman, as so amended.

Motions to Amend should always be put and considered in the reverse order in which they are offered, *i.e.*, the motion *last* made (relating to the subject matter) must be the *first* to be considered and disposed of.

(7) A motion to Postpone Indefinitely is debatable, but cannot be amended. Its object, usually, is to suppress the question before the meeting and prevent a vote being taken thereon.

Its effect is to prevent any further consideration of the question at that meeting, unless a motion to reconsider the vote of indefinite postponement be made and carried.

A motion to Reconsider a vote already taken is always in order, although it cannot be considered while any other question is being considered; but the mover of the motion to Reconsider—which must always be made, except when the vote was by ballot, by one who voted against the motion—may have such motion entered on the minutes, and can then call it up for consideration at any time during the meeting when there is no question before the meeting.

While there are several Incidental and Privileged Questions, that sometimes arise in large assemblies, the following five Questions, arranged in their order of precedence, are the only ones that will often arise in either Parish or Vestry meetings:

1. *To Fix the Time to which the Meeting shall Adjourn.*
2. *To Adjourn.*
3. *To Appeal.*
4. *To Suspend the Rules.*
5. *The Previous Question.*

(1) A motion to Fix the Time to which to Adjourn can be

amended, but is not subject to debate, unless no other question is under consideration at the time when such motion is offered. It takes precedence over all other motions, and may be made at any time before the Chairman has *announced* the vote on a motion to Adjourn.

(2) A motion to Adjourn, when unqualified, is always in order except when a member has the floor, or while a vote is being taken. If a motion to Adjourn be voted down, it can be renewed at any time, provided any business or debate intervene between the making of such motions. A motion to Adjourn, when unqualified, cannot be debated, nor can it be amended in any way, and takes precedence over all other motions, except a motion to Fix the Time to which the meeting shall Adjourn. If a motion to Adjourn be made while any question is under consideration, its effect is to place such question in the list of Unfinished Business for the next meeting of the Vestry.

(3) Any member has a right to Appeal from the decision of the Chair, but such Appeal must be made at the time of the decision. An Appeal takes precedence over all other motions and questions named, except a motion to Fix the Time to which to Adjourn, and a motion to Adjourn. Being a Question of Order, it cannot be amended, and is not usually subject to debate.

(4) A motion to Suspend the "Rules of Order" may be made only once for the same purpose during a meeting. This motion is not subject to debate, and cannot be amended in any way, and must be carried by a two-thirds vote in order to effect a suspension of the rules.

(5) The Previous Question is not debatable nor subject to amendment of any kind, and requires a two-thirds vote for its adoption. It takes precedence over all debatable questions, except a motion to Fix the Time to which to Adjourn. The vote by which it was adopted or rejected may be reconsidered. The object of the Previous Question and its effect, if adopted, is to prevent further debate, and bring the pending question to an immediate vote.

The following "Order of Precedence of Motions" is taken from "Roberts' Rules of Order," to which the author is greatly indebted, in his treatment of the subject, and to which reference should be had, for a clear and complete discussion of all questions relating to

"Rules of Order." The author has taken the liberty of omitting "For the Orders of the Day" from the following table, as such "Orders" are intended for meetings of other character than Parish or Vestry meetings, and, therefore, for the purposes of this work, require no consideration.

"ORDER OF PRECEDENCE OF MOTIONS."

"The ordinary motions rank as follows, and any of them (except to amend) can be made while one of a lower order is pending, but none can supersede one of a higher order; the Previous Question requires a two-thirds vote, the others only a majority.

UNDEBATABLE.

To Fix the Time to Which to Adjourn.	
To Adjourn (when unqualified).	*Cannot be Amended.*
To Lay on the Table.	
The Previous Question (two-thirds vote).	

DEBATABLE.

To Postpone to a Certain Time.	*Can be Amended.*
To Commit or Refer.	
To Amend.	
To Postpone Indefinitely."	

To the above motions should be added the following questions, which take precedence in the order named, and which are of prior rank to all the motions above named, excepting the two motions first stated, viz., a motion To Fix the Time to Which to Adjourn, and a motion To Adjourn:

To Appeal.	*Cannot be Amended.*
Objection to the Consideration of the Question.	
Leave to Withdraw the Motion.	
To Suspend the Rules.	

"The motion to Reconsider can be made when any other question is before the assembly, but cannot be acted upon until the business then before the assembly is disposed of, when, if called up, it takes precedence of all other motions, except to adjourn, and to fix the time to which to adjourn."—(*Roberts' Rules of Order, p.* 10.)

APPENDICES

With Forms.

AS the Statute Laws and the mode of procedure in the Courts of the several States are so variant, it is deemed unwise to attempt to set forth any forms of a purely legal nature.

Statutory requirements must, in all cases, be strictly complied with, and the services of one learned in the law should always be secured in the preparation of legal forms and instruments. Neglect to do so is one of the most fruitful sources of legal complications.

The Canons of the various Dioceses also differ so widely as to make it impossible to set forth any prescribed series of Canonical forms that will in every case fulfil the requirements of the variant Canons. In the following appendices the author has endeavored to set forth certain forms containing the maximum of requirements in each case. It will be necessary in many Dioceses to vary these several forms, in order to make them conform to the requirements of the Canon or Statute Law, or both, as the case may be, and which must be fully complied with.

APPENDIX A.

FORMS FOR THE INCORPORATION OF CHURCHES.

FORM OF NOTICE OF MEETING TO INCORPORATE A CHURCH.

NOTICE is hereby given that a meeting of the male persons (*or* the persons) of full age, belonging to this Church will be held on the —— day of ——, 19—, at — o'clock in the ——, in this place (*the usual place of worship*), for the purpose of incorporating themselves under the Acts of the Legislature in such case made and provided; to determine the corporate name or title by which such Church shall be known in law; on what day in —— week an annual election of Wardens (*or* Church Wardens) and Vestrymen shall thereafter take place; what number of Vestrymen, not less than —— nor more than ——, shall annually be elected to constitute, together with the Rector (*if there be one*), and the two Wardens (*or* Church Wardens), the Vestry of said Church; and, by a majority of votes, to elect two Wardens (*or* Church Wardens), and the number of Vestrymen determined to be elected, to serve until the next annual election.

Dated, etc.

[This notice should be signed by the Minister in charge, if there be one, or by the Wardens, or, if there be no Wardens, by any member or members of the congregation, and conspicuously posted on the outer door of the church, or usual place of worship, unless the law provides that it shall be posted elsewhere.

In some States the Statute requires that the notice shall be read during the time of Divine Service, and in others that it shall both be so read and so posted as before noted.

In some States, Articles of Association or Agreement, or a Constitution, must be adopted at such meeting. In such States the notice should state accordingly. Care should be taken that the notice gives intention of proposed action on every requirement of the Statute or Canon, or both.

In New York State the last two clauses of the form above given should be altered to read as follows:]

What number of Vestrymen, not less than three nor more than nine, shall be elected to constitute, together with the Rector (*if there be one*), and the two Church Wardens, the Vestry of the Church; and, by a majority of votes, to elect one Church Warden to hold office until the next annual election, and one Church Warden to hold office until one year after such annual election, and one-third of the number of Vestrymen, so determined, to hold office until the first annual election, one-third of such number to hold office until one year after such annual election, and one-third of such number to hold office until two years after such annual election.

[In the State of New Jersey the following notice is a sufficient compliance with the statutory requirements:]

Notice is hereby given to the congregation of ——— Church, in ———, that a meeting of the duly qualified voters of said Church will be held in ———, on ———, the ——— day of ——— , at ——— o'clock in the ———noon, for the purpose of taking such measures as may be necessary to incorporate the said congregation in accordance with the provisions of chapter sixty-two of the laws of nineteen hundred and one of the State of New Jersey, approved March 20, 1901, and entitled "A Supplement to an Act, entitled '*An Act to Incorporate Trustees of Religious Societies*' (*Revision*), *Approved April* 9, 1875, etc."

Dated, etc.

[To be signed by the Minister and five male members of full age.]

[In some Dioceses "Articles of Association" must first be adopted and signed by the persons of legal age, so adopting them, and officers be elected. These requirements having been complied with, a petition may then be presented to the proper Court, praying for a decree whereby the Church may become incorporated.]

APPENDIX B.

FORMS OF NOTICE OF ANNUAL ELECTION.

NOTICE is hereby given that an election for two Wardens (*or* Church Wardens) and — Vestrymen, will be held in this church (*or* parish house, *or such other suitable place as may be determined upon*) on the —— day of ————, 19—, at — o'clock in the ———noon (*or* evening).

(*If the law requires the polls to remain open a certain specified time, these words should be added to the notice:* The polls to remain open ——— hour [*or* hours], or longer if necessary.)

[In New York State, in such Parishes as have become incorporated under the Religious Corporation Act of 1909, being Chapter LI. of the General Laws of that State, or in such Parishes before incorporated as may have duly adopted the provisions of the said Act, the notice of the annual election may read substantially as follows:]

Notice is hereby given, that an election for one Church Warden, to succeed ———, elected for two years, whose term of office will then expire, and for ——— Vestrymen to succeed ——— ——— (*naming the Vestryman*), elected for three years, whose terms (*or* term) of office will then expire, will be held in this church (*or* place of worship, *or* parish house), on ———, the — day of ———— 19—, immediately after morning service, which will be held at —o'clock A.M., the polls to remain open one hour, or longer if required.

[Should any other business than the election of Wardens and Vestrymen be purposed at such meeting, it should be specified in the notice. If an election also be had to fill a vacancy, or for a successor to a Church Warden or Vestryman chosen by the Vestry to fill a vacancy, such fact should be stated in the notice.]

APPENDIX C.

FORMS RELATING TO ELECTION OF WARDENS AND VESTRYMEN.

FORM OF CERTIFICATE OF ELECTION OF WARDENS AND VESTRYMEN.

THIS is to certify that at the stated annual election of Wardens (*or* Church Wardens) and Vestrymen, for —— Church, ———, held, in pursuance to notice duly given, at ——— church (*or*, at the usual place of worship of said Church), on the —— day of ——— 19—, at — o'clock A.M. (*or* P.M.), the following persons were duly elected by a majority of the votes cast by the persons present and qualified so to vote: ———, and ———, as Wardens (*or* Church Wardens, *or* ——— as Senior Warden, and ———, as Junior Warden), and ——— (*naming the persons*), as Vestrymen for the ensuing year.

[In those States or Dioceses where the law requires that the certificate of the election of Wardens and Vestrymen shall be filed for record with some designated civil officer, it should be duly acknowledged.]

FORM OF ENTRY OF ELECTION IN BOOK OF MINUTES.

——— Church, ———, the ——— day of ———, 19—.

At a meeting of the qualified electors of said Church, of which notice was duly given according to law, held at the ———, on ———, the ——— day of ———, 19—, at ——— A.M. (*or* P.M.), to elect Wardens (*or* Church Wardens), and Vestrymen, I, the Rev. ———, Rector (*or* ———, one of the Wardens, *or* Church Wardens) of said Church, presided at such meeting, and (*unless the law provides otherwise*) received the votes of the said electors. I do also affirm that the polls were kept open for one hour (*if the law so requires*); that the following named persons, having each received a majority of the whole number of votes cast, were declared elected Wardens and Vestrymen of said Church for the ensuing year: —— and —— Wardens (*or* Church Wardens, *or* ——— Senior Warden, and —— Junior Warden), and ——— (*naming the persons*), Vestrymen.

[This should be signed by the Presiding Officer and the Secretary of the meeting or by such other persons as the law may direct. If the election be to fill a vacancy, the same form, with obvious changes, may be used. If any other business than the election of Wardens and Vestrymen be transacted at such meeting it should also be recorded in the "Book of Minutes." In New York State in such Parishes as may hold their elections under the provisions of the Religious Corporations Law of 1909, the terms for which the Church Warden and Vestrymen were elected, and the names of the Church Warden and Vestrymen whom they succeed, should also be entered in the "Book of Minutes," and the above form varied accordingly.]

APPENDIX D.

FORM OF CERTIFICATE OF LAY DEPUTIES TO DIOCESAN CONVENTIONS.

(*Name of Church and Place.*)

(*Date.*)

THIS is to certify that at a regular meeting of the Vestry of this Church (*or* at the annual meeting of the Parish for the election of Church officers and Deputies to the Convention), held according to law on the ——— day of ———, 19—, in ——— (*naming the place*), ——— (*giving the names of the persons in full*), were duly elected Lay Deputies (*or* Delegates) for the ensuing year, to the Convention (*or* Council) of the Church in the Diocese of ———, and that each of said Deputies (*or* Delegates) so elected, is a communicant of the Church in this Parish. (*If other qualifications are required by the Canons, state that each is so qualified.*)

[This certificate must be signed by the Rector and such other officer as the Canons may direct. If there be no Rector, it should be so stated in the certificate, and the certificate signed by the Warden who presided at such meeting, or by both Wardens, according as the Canons may require.

In most of the Dioceses, the form of the certificate is prescribed by the Canons or by the Convention or Council of the Diocese, and where so prescribed should be strictly followed. The above form is given simply as a guide to Parishes, in those Dioceses where no particular form is prescribed by the Canons or the Convention. Where alternates are chosen, their names may be included in one certificate, the language being varied accordingly.]

APPENDIX E.

FORMS RELATING TO THE TRANSFER OF REAL CHURCH PROPERTY.

FORM OF PETITION TO THE BISHOP AND STANDING COMMITTEE OF THE DIOCESE FOR PERMISSION TO ALIENATE REAL CHURCH PROPERTY.

To the Bishop and Standing Committee of the Diocese of ———:

THE petition of the Rector, Wardens (*or* Church Wardens) and Vestrymen of ——— Church in ———, respectfully showeth:

That they are seized in fee of certain premises, consisting of one tract of land, situated in said ———, bounded and described as follows: (*Here describe the premises in full. If any buildings are situated on such premises, so state.*) That the said Corporation have incurred a debt of ——— dollars by reason of ——— (*stating the reason, or that they desire to erect a church or parish house or rectory, as the case may be, stating concisely the reason for desiring to alienate the property described, and that the money to be derived from the sale or mortgage of such property is necessary for the purpose stated*). That said premises are valued in the sum of ——— dollars.

That at a meeting of the Vestry of said Church, duly called, and held on the ——— day of ———, 19—, at which meeting were present the Rector, two Wardens (*or* Church Wardens) and ——— Vestrymen, being a majority of the same, the following resolution was adopted by a majority vote (*or* unanimous vote) of those present at said meeting, to wit: (*Insert the resolution.*)

That a meeting of the qualified voters of said Church was held in the church (*or* usual place of worship) of said corporation, on ———, the ——— day of ———, 19—, pursuant to a notice duly given, which notice contained the aforesaid resolution, and

stated that said resolution would be then and there submitted to the qualified voters of said Church for their approval or rejection; and that at said meeting a vote was taken for that purpose, and said resolution was adopted by an unanimous vote (*or* by the vote of a majority of the qualified voters present thereat).

Your petitioners therefore pray that the consent of the Bishop and Standing Committee may be given to the sale (*or* mortgage, *or otherwise as may be desired*) of the said premises herein described.

The Rector, Wardens (*or* Church Wardens), and Vestrymen of ——— Church in ———.

Per ———, Rector.

Dated, etc.——

APPENDIX F.

FORMS FOR ORGANIZING MISSIONS AND PARISHES.

FORM OF APPLICATION TO THE BISHOP FOR HIS CONSENT TO ESTABLISH A MISSION.

IN many of the Dioceses the Canons prescribe the form of the application to be sent to the Bishop, asking his consent to the establishment of a Mission. In those Dioceses where no form is so prescribed, the application may be made substantially as follows:

To the Right Reverend ———, *Bishop of the Diocese of* ———:

We, the undersigned, residents of (*or* in or near) the ——— of ———, County of ———, in this Diocese, being desirous of obtaining the ministrations of the Protestant Episcopal Church for ourselves and for our families, do hereby request the Bishop that he will provide the same for us, in such wise as he may deem expedient (*or* do hereby unite in the organization of a "Mission" of said Church).

And for these benefits, we do hereby place ourselves under the jurisdiction of the Bishop (*or* Ecclesiastical Authority) of this Diocese, and do recognize and promise obedience and conformity to the Constitutions and Canons of the General Convention, and of the Church in this Diocese; and we desire to be organized as a "Mission" (*or* we ask to be received as an "Organized Mission"), in accordance therewith, under the name of "——— Mission, in ———."

And furthermore, we do hereby agree to pay monthly (*or* for this year), from this Mission and for its support, to the Treasurer of the Board of Missions (*or* to the Treasurer of the Mission), the sum of $———, until ———, 19—, and thereafter a sum to be stated to the Bishop at each Convention of the Diocese.

[This application, or a like application, must be signed by those who desire the services of the Church, and purpose to be members of the Mission.]

FORM OF APPLICATION TO THE BISHOP FOR HIS CONSENT TO ORGANIZE A NEW PARISH.

To the Right Reverend ———, Bishop of ———:

We, whose names are here underwritten, respectfully show that we are each (*stating every requirement of the Canon in such case made and provided*), that we are residents of ———, County of ———, in this Diocese, and being deeply sensible of the Truth of the Christian Religion, and conscientiously attached to the Doctrine, Discipline and Worship of the Protestant Episcopal Church in the United States, and being earnestly desirous of establishing its authority, and securing its holy influences, for ourselves, our families, and neighbors, and those to come after us, do hereby respectfully ask the permission of the Bishop of the Diocese to associate and organize ourselves and others, as a Parish of the said Church, in the Diocese of ———, under the name and title of ———, in said place herein designated; and we hereby solemnly promise and declare that the said Parish shall be forever held and incorporated under the Ecclesiastical Authority of the Bishop of ———, and of his successors in office, and in conformity with the Constitution and Canons of the Protestant Episcopal Church in the United States of America, and the Constitution and Canons of the Diocese of ———, the authority of which we do hereby recognize, and to whose Liturgy, Doctrine, Discipline, Rites and Usages, we promise at all times, for ourselves and our successors, corporate obedience and conformity. Furthermore, we solemnly engage and stipulate that all real estate of which the said Parish may become possessed shall be secured forever against alienation from the Church, now known as the "Protestant Episcopal Church in the United States of America," unless with the consent of the Bishop and Standing Committee of this Diocese, or, in case of a division of this Diocese, of that Diocese within whose jurisdiction we may come. We, your petitioners, would further state that our place of worship (*or* intended place of worship) is distant ——— from ——— church in ———, ——— from ——— church in ———, ——— from ——— church in ———; and we do hereby promise and stipulate that we will not erect any church edifice or place of

worship within a distance of ——— from any existing church, chapel, or place of worship of any congregation in communion with the said Protestant Episcopal Church. We do also promise and engage that the said Parish will apply so soon as possible after its incorporation, for admission into union with the Convention of the Diocese of ———, and will become subject to the Constitution and Canons thereof.

Dated ——— day of ———, 19—.

[If any other facts are required by the Canons of the Diocese, they should also be stated therein. This petition must be signed by the full number of persons determined by the Canons of the Diocese, and possessing the qualifications therein required.

Owing to the varying requirements of the Canons of the several Dioceses in the matter of the petition to the Bishop for consent to establish a new Parish, it is impossible to set forth a form that will fulfil the requirements in every Diocese. The above form is given as a model, which may be varied more or less materially, to comply with the varying requirements in those Dioceses where the precise form of the petition is not prescribed by the Canons or by the Convention.]

FORM OF CONSENT.

The petition of certain persons desiring the formation of a new Parish in the ——— of ———, County of ———, to be known as ——— Church, having been duly considered (*insert the words*, by the Standing Committee and by them approved, *if the Canons require such consent*), I do hereby give my canonical consent to the formation of said Parish, in agreement with the promises, engagements, and stipulations contained in the said petition.

Given under my hand this ——— day of ———, in the year of our Lord one thousand nine hundred and ———.

———, Bishop of ———.

ATTEST: ———, *Secretary of the Standing Committee.*

FORM OF NOTICE OF ORGANIZATION.

Notice is hereby given that we, whose names are here underwritten, and who signed the application made to the Bishop for

his consent to the formation of a Parish in ———, to be known as the Rector, Wardens (*or* Church Wardens) and Vestrymen of ——— Church, in ———, ———, will assemble at ———, for the purpose of organizing said Parish of the Protestant Episcopal Church in ———, County of ———, and State of ———, in the Diocese of ———, on ———, the ——— day of ———, A.D. 19—, at the hour of ——— o'clock in the ———.

Dated ———.

[This notice should be signed by the same persons, and by all of them, who signed the application to the Bishop. The meeting assembled in pursuance of such notice duly given should adopt Articles of Association or Agreement, or a Constitution, as the Canons may require. The requirements of the Canons of the several Dioceses regarding such Articles or Constitution are so variant as to render it impossible to set forth any prescribed form for general use. In many of the Dioceses a form is set forth by the Convention, and in most of those Dioceses where no form is so set forth, the necessary requirements are prescribed in the Constitution and Canons of the Diocese, and, in some cases, by the Statute Law of the State. In many cases it will be found advisable to embody in such Articles or Constitution the main facts set forth in the petition to the Bishop.]

APPENDIX G.

FORMS FOR POSTULANTS AND CANDIDATES FOR HOLY ORDERS.

[The forms following denominated "Canonical," are those actually prescribed by the general Canons, and must be strictly followed.]

NOTICE OF INTENTION TO BECOME A POSTULANT.

To the Right Reverend ———, *Bishop of* ———:

RIGHT REVEREND AND DEAR SIR:

Having resolved to devote myself to the Sacred Ministry of the Church, and believing myself to be inwardly moved thereto by the Holy Spirit, I hereby, with the approval of my Pastor (*or if he has no Pastor*, of the Rev. ———, a Presbyter of the Church to whom I am personally known), and whose letter I herewith inclose, give the notice required by Canon I, "*Of Postulants*," and respectfully ask to be admitted as a Postulant in your Diocese.

My full name is ——— ———; I was born in ———, on the ——— day of ———, A.D. ———; I have been a resident in this Diocese (*or* Missionary District) for ——— years (*or* months); I was baptized on the ——— day of ———, A.D. ———, by the Rev. ——— ———; confirmed in ——— Church, ———, on the ——— day of ———, A.D. ———, by the Right Reverend ———, ———, Bishop of ———; was admitted to the Holy Communion in ——— Church, ———, on the ——— day of ———, A.D. ———.

I have never before applied for admission as a Postulant or Candidate for Holy Orders. (*If, however, he has before so applied, he must state the fact, with an explanation of the same.*)

I am moved to seek the Sacred Ministry (*here state the grounds, etc.*).

[Signed]

FORM OF POSTULANT'S APPLICATION TO THE STANDING COMMITTEE FOR RECOMMENDATION AS A CANDIDATE FOR HOLY ORDERS.

To the Standing Committee of the Diocese of ——:

(*Place*)

(*Date*)

I, ———, being ——— years of age, and having been duly received as a Postulant in this Diocese, do hereby make application to be by you recommended to the Bishop of ———, for admission as a Candidate for Holy Orders.

I enclose herewith the Bishop's Certificate of my admission as a Postulant, and the Canonical certificate of the Minister and a majority of the Vestry of the Parish to which I belong.

[Signed] ——— ———.

CANONICAL CERTIFICATE OF MINISTER AND VESTRY.

To the Standing Committee of ———:

Place, *Date*,

We, whose names are hereunder written, testify to our belief (based on personal knowledge or on evidence satisfactory to us) that ——— ——— is sober, honest, and godly, and that he is a communicant of this Church in good standing. We do furthermore declare that, in our opinion, he possesses such qualifications as fit him to be admitted a candidate for Holy Orders.

[Signed] ——— ———.

[This certificate must be signed by the Minister of the Parish to which the applicant belongs, and by a majority of the whole Vestry, and must be attested by the Minister, or by the Secretary of the Vestry, as follows:]

I hereby certify that the foregoing certificate was signed at a meeting of the Vestry of ——— Parish, duly convened at ———, on the —— day of ———, and that the names attached are those of all (or a majority of all) the members of the Vestry.

[Signed] ——— ———,

Minister *or* Secretary.

[Care should be taken to have the above certificate signed by the members of the Vestry *during* the meeting of the Vestry. Signing the certificate after the meeting had adjourned would not be a sufficient compliance with the Canon, which requires that the attestation to the certificate must state that it was signed "*at a meeting duly convened.*" (*See Canon* 2, *Section* i., *of the Digest.*) If the Parish to which the applicant belongs be without a Minister, the certificate may be signed by any Presbyter of the Diocese in good standing, the reason therefor being stated in the attesting clause. If there be no Parish at the place of residence of the applicant, the certificate may be signed by any Presbyter of the Diocese in good standing, and by four Laymen, communicants of the Church, in good standing, in which case the reasons for departing from the regular form must be stated in the attesting clause, which shall be signed by the same, or some other Presbyter of the Church, and shall be in the following words, viz.]:

I hereby certify that the Laymen whose names are attached to the foregoing certificate are communicants of this Church in good standing, and that this form of certificate was used for no reasons affecting the moral or religious character of the candidate, but because (*here give the reasons for departing from the regular form*).

[Signed] ——— ———

Presbyter of the Diocese, *or* Missionary District of ———.

[In case the applicant should have been a Minister or Licentiate in some other body of Christians, the certificate to the Standing Committee may be signed by eight Adult Laymen, members in good standing of the denomination from which the applicant has come, or members of the Church, or in part members of the Church, and in part members of the said denomination. These signatures and the good standing of the signers must be attested by some person or persons known to a member of the Standing Committee, or else under the seal of a Notary Public in the following words, viz.:]

I do hereby certify that the names attached to the foregoing certificate are genuine, and are those of persons in good standing, members of (*as the case may be*).

[Signed]

CANONICAL CERTIFICATE TO BE LAID BEFORE THE STANDING COMMITTEE IF THE APPLICANT BE A MINISTER OF ANOTHER CHRISTIAN BODY.

To the Standing Committee of ——— :

Place, *Date,*

We do hereby certify that we are personally acquainted with ——— ———; that he has become a communicant of this Church, and that we believe him to be sober, honest, and godly. Furthermore, we are satisfied after personal examination and due inquiry concerning him as to his former religious relations, that he accepts the Doctrine, Discipline and Worship of this Church, and that his change of relations has not arisen from any circumstances unfavorable to his moral or Christian character, or on account of which it may not be expedient to admit him to the Ministry of this Church.

[Signed] ——— ———

[This certificate must be signed by two Presbyters of the Church known to the Committee.]

CANONICAL TESTIMONIAL OF RECOMMENDATION BY THE STANDING COMMITTEE.

To the Right Reverend ———, *Bishop of:*

We, being a majority of all the members of the Standing Committee of ——— ———, and having been duly convened at ———, do testify that from personal knowledge or from certificates laid before us, we are well assured that ——— ——— is sober, honest and godly; and that he is a communicant of this Church in good standing; and we do furthermore declare that, in our opinion, he possesses qualifications which fit him to be admitted a Candidate for Holy Orders.

In witness whereof, we have hereunto set our hands this ——— day of ———, in the year of our Lord ——.

[Signed]

FORM OF CANDIDATE'S APPLICATION TO THE STANDING COMMITTEE FOR RECOMMENDATION TO THE BISHOP FOR ORDINATION TO THE SACRED ORDER OF DEACONS.

To the Standing Committee of the Diocese of———:

(*Place*)

(*Date*)

I, ——— ———, a Candidate for Holy Orders in this Diocese, do hereby make application to be by you recommended to the Bishop of this Diocese, for ordination to the Sacred Order of Deacons. I was born in ———, on the ——— day of ———, 18—.

I inclose herewith, as required by Canon, the certificate of the Bishop, as to the date of my admission as a Candidate, and the character of my candidateship; the certificate of the Rev. ———, a Presbyter of the Church; and a certificate from the Minister and Vestry of the Parish of which I am a member.

[Signed]

——— ———.

CANONICAL CERTIFICATE OF A PRESBYTER.

To the Standing Committee of ———:

(*Place*)

(*Date*)

I hereby certify that I am personally acquainted with ———, and that I believe him to be well qualified to minister in the Office of Deacon to the glory of God and the edification of His Church.

[Signed]

CANONICAL CERTIFICATE OF MINISTER AND VESTRY.

To the Standing Committee of ——— :

Place, *Date,*

We do certify that, after due inquiry, we are well assured and believe that ——— ———, for the space of three years last past, hath lived a sober, honest and godly life, and that he is loyal to the Doc-

trine, Discipline and Worship of this Church, and does not hold anything contrary thereto. And, moreover, we think him a person worthy to be admitted to the Sacred Order of Deacons.

[Signed] Minister of ——— Parish.

Vestry of ———.

[This certificate must be attested by the Minister of the Parish, or by the Clerk or Secretary of the Vestry, as follows, viz.:]

I hereby certify that ——— is a member of ——— Parish in ———, and a communicant in the same; that the foregoing certificate was signed at a meeting of the Vestry duly convened at ——— on the ——— day of ———, and that all the names attached are those of all (or a majority of all) of the members of the Vestry.

[Signed] Minister of ———,

or Clerk *or* Secretary of Vestry.

[Care should be taken to have this certificate signed by the members of the Vestry, *during* the meeting, and *before* the adjournment thereof.

If the Parish be without a Minister, the certificate may be signed by the Vestry and any Presbyter of the Diocese in good standing. The reason for so departing from the regular form must be stated in the attesting clause. If there be no Parish at the place of residence of the Candidate, the certificate may be signed by any Presbyter of the Church in good standing, and six Laymen, communicants of this Church in good standing.

In such case, the reasons for departing from the regular form must be given in the attesting clause, which shall be signed by a Presbyter in good standing in the following words, viz. :]

I hereby certify that the laymen whose names are attached to the foregoing certificate are communicants of this Church in good standing, and that this form of certificate was used for no reasons affecting the moral or religious character of the Candidate, but

because (here give the reasons for departing from the regular form.)

[Signed]

CANONICAL TESTIMONIAL OF THE STANDING COMMITTEE.
(DEACON'S ORDERS.)

To the Right Reverend ———, *Bishop of* ———:

We, being a majority of all the members of the Standing Committee of ———, and having been duly convened at ———, do testify that ——— ———, desiring to be ordered Deacon, hath laid before us satisfactory certificates that for the space of three years last past he hath lived a sober, honest, and godly life, and that he is loyal to the Doctrine, Discipline, and Worship of this Church, and does not hold anything contrary thereto. And we hereby recommend him for ordination to the Diaconate.

In witness whereof, we have hereunto set our hands, this ——— day of ———, in the year of our Lord ———.

[Signed]

FORM OF CANDIDATE'S APPLICATION FOR ORDINATION TO THE PRIESTHOOD.

To the Standing Committee of the Diocese of ———:

(*Place*)
(*Date*)

I, ———, a Candidate for Priest's Orders in this Diocese, do hereby make application to be by you recommended to the Bishop of this Diocese for ordination to the Sacred Order of Priests. I was born on the ——— day of ———, A.D. ———. I inclose herewith the certificate of the Bishop declaring that the term of my candidateship and the term of my service in the Diaconate have been completed; also the certificate of the Minister and Vestry of the Parish where I reside.

[Signed] ——— ———.

CANONICAL CERTIFICATE OF THE MINISTER AND VESTRY OF THE PARISH.

To the Standing Committee of ——— :

Place, *Date,*

We do certify that, after due inquiry, we are well assured and believe that the Reverend ——— ———, Deacon, since the ——— day of ——— in the year ———, being the date of his ordination to the Diaconate [*or* for the space of three years last passed], hath lived a sober, honest, and godly life, and hath not written, taught, or held anything contrary to the Doctrine, Discipline, or Worship of this Church. And, moreover, we think him a person worthy to be admitted to the Sacred Order of Priests.

[Signed]

[The Canon requires that this certificate must be attested by the Minister of the Parish, or by the Clerk or Secretary of the Vestry, as follows :]

I hereby certify that the Reverend ——— ——— is a resident of ——— Parish in ———; that the foregoing certificate was signed at a meeting of the Vestry duly convened at ——— on the ——— day of ———, and that the names attached are those of all (or a majority of all) the members of the Vestry.

[Signed]

The Minister of ———,

or Clerk *or* Secretary of Vestry.

[The Canon provides that if the Parish be without a Minister, it shall suffice that in his place the certificate be signed by some Presbyter of the Diocese or Missionary District in good standing, the reason for the substitution being stated in the attesting clause.

The Canon also provides that if there be no Parish where the Candidate resides, the Standing Committee may accept a certificate in the same words, signed by one Presbyter of the Church in good standing, and six Laymen, communicants of the Church in good standing, and the said Presbyter, or some other Presbyter

of this Church in good standing, shall attest the certificate, and in the following words:]

I hereby certify that the laymen whose names are attached to the foregoing certificate are communicants of this Church in good standing, and that this form of certificate was used for no reasons affecting the moral or religious character of the candidate, but because (here give the reasons for departing from the regular form).

[Signed]

Presbyter of the Diocese, *or* Missionary District of ———.

CANONICAL TESTIMONIAL OF THE STANDING COMMITTEE.
(PRIEST'S ORDERS.)

To the Right Reverend ———, *Bishop of* ———:

We, being a majority of all the members of the Standing Committee of ———, and having been duly convened at ———, do testify that the Rev. ——— ———, Deacon, desiring to be ordered Priest, hath laid before us satisfactory certificates that since the ——— day of ——— in the year ———, being the date of his ordination to the Diaconate [*or* for the space of three years last past], he hath lived a sober, honest, and godly life, and hath not written, taught, or held anything contrary to the Doctrine, Discipline, or Worship of this Church; and we hereby recommend him for ordination to the Priesthood.

In witness whereof we have hereunto set our hands, this ——— day of ———, in the year of our Lord ———.

[Signed]

[While the several certificates for Priest's Orders are substantially in the same words as the corresponding certificates for Deacon's Orders, yet it has been deemed advisable to set forth the required certificates in each case, as the Canons state that "No certificate or testimonial, the form of which is supplied by Canon, shall be valid, unless it be in the words prescribed."—(*Canon* 8, *Section* ii., *of the Digest.*)

All the foregoing forms, designated as "Canonical" certificates or testimonials, are those so supplied by Canon, and must be strictly followed. The Canons also provide that "No Postulant or Can-

didate for Holy Orders shall sign any of the certificates prescribed in the foregoing Canons of Ordination."

Whenever a dated certificate or testimonial is required, the omission of the date shall render such certificate or testimonial liable to rejection.—(*Canon* 8, *Section* ii., *of the Digest.*)

Whenever the certificate of a Vestry is required, such certificate must be signed by a majority of the whole Vestry, at a meeting duly convened, and the fact must be attested by the Secretary of the said Vestry or by the Minister.—(*Canon* 8, *Section* ii., *of the Digest.*)

It should be noted, as has before been remarked, that *"at a meeting duly convened"* means while the meeting is still convened, and *not* after the meeting has adjourned. A certificate signed by the Vestry after the meeting had adjourned would be invalid, and the Secretary or Minister could not attest that it was signed " at a meeting duly convened," as the Canon explicitly requires.

Too great care cannot be taken to comply strictly with every requirement of the Canons relating to Ordination.]

APPENDIX H.

MISCELLANEOUS FORMS.

NOTICE TO THE BISHOP OF THE ELECTION OF A RECTOR OR ASSISTANT MINISTER.

TO the Right Reverend ———, *Bishop of* ——— :

We, the Church Wardens [*or*, *in case of an Assistant Minister*, We, the Rector and Church Wardens], do certify to the Right Rev. [*naming the Bishop*], or to the Rev. [*naming the President of the Standing Committee*], that [*naming the person*] has been duly chosen Rector [*or* Assistant Minister, *as the case may be*] of [*naming the Parish or Church*].

[Signed] ———, Church Wardens.

Dated at ———, the ——— day of ———, A.D. 19—.

[In case of the election of an Assistant Minister, the Rector must also sign this notice.—(*Canon* 15, *Section* v., *of the Digest.*)]

CANONICAL LETTER DIMISSORY.

To the Right Reverend ———, *Bishop of* ——— :

I hereby certify that ———, who has signified to me his desire to be transferred to the Ecclesiastical Authority of ———, is a Presbyter (*or* Deacon), of ———, in good standing, and has not, so far as I know or believe, been justly liable to evil report, for error in religion or viciousness of life, for three years last past.

[Signed] ———, Bishop of ———.

Dated at ———, the ——— day of ———, A.D. 19—.

CANONICAL CERTIFICATE OF TRANSFER.

I hereby certify that the Rev. ——— has been canonically transferred to my jurisdiction, and is a Minister in good standing.

[Signed] ———, Bishop of ———.

Dated at ———, the ——— day of ———, A.D. 19—.

FORMS FOR COMMENDATORY LETTERS.

(*Place.*) ———, *Date* ———.

In the name of the Father, and of the Son, and of the Holy Ghost. Amen.

I certify that the bearer of this letter, ———, is a Communicant in good standing of the Parish (*or* Mission) of ———, and upon his (*or* her) request is hereby dismissed from our pastoral care, and commended to the pastoral care of ———.

[Signed] ——— ———,
Rector (*or* Warden).

I hereby certify that ———, who has signified to me his (*or* her) desire to be transferred to the Parish of ———, is a member of the Church, and has been a communicant in good standing for —— years past in the Parish of ———, and as such is affectionately commended to the charge of ———, as his (*or* her) Pastor in the Church of God.

This certificate, if not presented in six months from date, may be held to be void, and it is not to be used as a general testimonial.

[Signed] ——— ———.

Dated, ———.

[It is made the duty of every communicant, by the Canon of the General Convention, to apply, on removal from the Parish, for a letter testimonial of his or her standing. (*Canon* 40, *Section* i., *of the Digest.*) In many of our Parishes this Canon is practically a dead letter, thus rendering the statistics of the Church relating to the communicants thereof less reliable than they ought to be. More positive legislation on this question by the General Convention of the Church is sadly needed.]

TABLE OF CASES.

TABLE OF CASES.

[THE NUMBERS REFER TO THE PAGES.]

Alston *v.* Attlay.....33
Appeal of Ritenhouse..161,307
Asher *v.* Calcraft.....293
Avery *v.* Tyringham.....243

Bailey *v.* M. E. Church.....155
Baker *et al. v.* Wood.
137, 196, 198, 255
Bartlett *et al. v.* Hipkins
41, 45, 241
Batterson *et al. v.* Thompson
et al....41,106,110,243,263
Baxter *v.* McDonald. 176
Beal *v.* Fox.....34
Beck *v.* Hanscom.....202
Beckett *v.* Lawrence.....307
Berryman *v.* Perkins.....191
Bird *v.* Smith..... ..172
——— *v.* St Mark's Church
179, 243
Blake *v.* Church Wardens, etc.
277
Boehm *v.* Engle.....23
Bogardus *v.* Trinity Church
23, 42, 104
Brick Pres. Church *v.* Mayor.168
Brown *v* Langdon.....63
Burder *v.* Mayor.....33
Burton *v.* Henson.....293

Cammeyer *v.* The Churches,etc.
161
Canal Appraisers *v.* People
et al.....23,42
Cargill *v.* Sewall.....264
Caudry's Case.....31
Chase *v.* Cheney.
93, 110, 166, 171, 177
Christ Church *v.* Phillips.
93, 171, 176
Church *v.* Bowden.....166
———*v.* Church.....159
Church Wardens St. John's
Church,etc , *v* Parishioners,
etc.....276
Commendams, Case of the...31
Commonwealth *v.* Cain.....167
———*v.* Knowlton.....23
———*v.* Leach *et al*.....23
Comstock *v.* Howd.....167
Connitt *et al. v.* Dutch Church
et al.....176,186
Constant *v.* Rector, etc.....161
Craig *v.* First Pres. Church, etc.
195
Crump *v.* Morgan..41, 104, 110

Dahl *v.* Palache.....121
Daniel *v* Wood.....165
Dartmouth College *v.* Woodward.....155
Deaderick *v.* Lampson.....166
Dean *v.* Met. El. R.R. Co..218
DeRuyter *v.* Trustees, etc.
19, 23, 34, 42
Dewdny *v.* Good..257, 276, 304
Diligent Fire Co. *v.* Commonwealth.....155
Doremus *v.* Dutch Church..186

East Norway Lake Church
et al. v. Halvorson.....176
Elizabeth, The.....218
Evans *v.* Dodson..... .277
——— *v.* Evans..... 245
Evars *v* Owens.....39
Eyre *v.* Jones.....274

First Bap. Church *v.* Bigelow
164
———Church,etc.,*v.* Hillery132
Fowler *v.* Pierce.....191

Gaff *et al. v.* Greer *et al*..93,176

Gaines *v.* Coates.....154
Gaskins *v.* Gaskins..41,104,110
Ger. Ref. Church *v.* Seibert..93
Gorham *v.* Bishop of Exeter.212
Greenslade *v.* Darby...183, 262
Griffith *v.* Dighton.....305

Hallman *v.* Bennett.....218
Hartt *v.* Harvey.....139
Harward *v.* Arden.....257, 304
Heeney *v.* St. Peter's Church 110, 165
Heiskell *v.* Mayor, etc.....155
Hennessy *v.* Walsh.....177
Humbert *v.* St. Stephen's Church..23,110,239,258,264
Hutchins *v.* Denziloe.....267

In re Directors L. I. R. R. Co. 167
Isham *v.* Fullager.....166
———*v.* Trustees, etc.....160

Jackson *v.* Adams.....294
James *v.* Dubois.....218
Jennings *v.* Scarborough, etc. 110, 176, 240, 243, 247, 263
Jones, Case of Rev. Cave...107
———*v.* Lamar.....218
———*v.* Wadsworth.....160
Kellogg *v.* Dickenson.....165
King *v.* Brower.....202
———*v.* Miller.....202
Kuns *v.* Robertson.....176

Lee *v.* Matthews.....256, 305
Leonard *v.* Lent.....161
Livingston *v.* Rector *et al.* 109, 111, 171, 176, 251, 263
Lynd *v.* Menzies 109, 110, 163, 183, 243, 260, 263

McCall *v.* The Byram Mfg. Co. 129
McDermott *v.* Board of Police, etc.....168
Madison Ave. Bap. Church *v.* Bap. Church.....134
Manuel *v.* Manuel.....218
Marshall *v.* Andrew. 257, 277, 305
Mason *et al.* *v.* Muncaster *et al.* 92, 110, 159
Mayor *et al.* of Baltimore *v.* Howard.....218
Miller *v.* Church.....155
Montclair *v.* Ramsdell.....218
Moore *v.* Rector, etc.....197

Neilson's Appeal.....201
Nelson *v.* Benson.....166

O'Donovan *v.* Chatard.....176
Oregon S. S. Co *v.* Otis.....192

Palmer *v.* Stumph.....218
Patterson *v.* Winn.....23
Pendleton *v.* Bank of Ky...218
People *v.* Albany and Sus. R. R. Co.....121
———*v.* Devin.....148
———*et al.* *v.* Tuthill *et al.* 125, 141, 143
———*ex rel.* *v.* Chicago Live Stock Exchange.....168
———Kenney *v.* Winans. 204, 205, 308
———Peck *v.* Conley..179, 221
———Remington *v.* Rector, etc. 200, 255
———*v.* Peck.....193
———*v.* Phillips.....148
———*v.* White.....139
———*v.* Whiteside....195, 202
People's Bank *v.* St. Anthony's Church.....161, 307
Pounder *v.* Ashe....93,171,176
Prickett *v.* Wells.....168, 171
P. R.R. Co. *v.* Canal Com's.154

Queen *v.* D'Oyly. 137, 190, 196, 199, 255
———*v.* Millis.....32, 39

Rector *v.* Vestry St. John's Church, etc. 258, 269, 274
———St. James' Church, etc. *v.* Huntington, etc...178, 219
Redhead *v.* Wait *et al.*..257, 304
Reg. *v.* Best.....191
Rex *v.* Bellringer.....194
———*v.* Buller.....194
———*v.* Church Wardens of St. Bartholomew's.....205
———*v.* Church Wardens of St. Matthew's.....205
———*v.* Gaborian.....205
———*v.* Martin Rice.....294
———*v.* Miller.....194, 197
———*v.* Morris.....194, 197
———*v.* Thornton....194, 197
Reynolds *v.* Monkton.....293
Ritchings *v.* Cordingley. 257, 277, 304
Robertson *v.* Bullions *et al.*..154
Rogers, *ex parte* 195, 202
Runkel *v.* Winemiller.....264

Sackett *v.* Sackett.....23
St. George's-in-the-East, Case of.....268
St. George's, Wolverhampton, Case of..... 268
St. Mary's Church, Case of. 195, 196, 202
St. Patrick's Church *v.* Gavelon. 161
St. Paul's Church *v.* Ford..164
St. Stephen's Church Cases. 151, 191, 205
Salem Mill Dam Corp. *v.* Ropes. 154
School Directors, *ex parte*..191
Shannon *et al. v.* Frost *et al.*176
Shaw *v.* Beveridge.....165
Sheldon *v.* Parish, etc.....179
———*v.* Vail.....165
Smith *v.* Law.....193
———*v.* Moffat.....154
Society *et al. v.* New Haven *et al*.....63, 110
Sohier *v.* Trinity Church 93, 159
Stack *v.* O'Hara.....93, 176
Starkey *v.* Barton.....302
State *ex rel.* Dunlap *v.* Stewart *et al*.....135
———*v.* Kendall.....206
Stavely *v.* Ullithorne.. 33
Stocks *v.* Booth.....183, 263
Stoughton *v.* Reynolds.....198
Taylor *v.* Griswold.....167
———*v.* Timson.....293
Terrett *et al. v.* Taylor *et al.* 42, 62, 92, 110, 183, 264
Thompson *v.* Weller.....154
Town of Pawlet *v.* Clark *et al.*20

Underwood *v.* Waldron....167
Union Colony *v.* Elliott....191
United Brethren, etc., *v.* Van Dusen.....161, 307
University of Maryland *v* Williams.....195

Vanness *v.* Packard.....20
Vestry *et al. v.* Barksdale....45
———St. Luke's Church *v.* Matthews.....167

Walker *v.* Wainright.....176
Watson *v.* Jones. 93, 110, 160, 171
Wheaton *v.* Gates.....165
White Lick Quaker Case.... 93
Williams *v.* Glenister.....293
Wilson *v.* M'Math. 137, 197, 268, 274
Worrel *v.* First Pres. Church. 179
Wyndam *v.* Cole.....270, 274

Youngs *v.* Ransom..179, 242, 260

INDEX.

INDEX.

A

Act of Convention of 1786, 99.
Sent to English Archbishops, 100.
Act of Parliament, 99.
Acts of Henry VIII., 28.
Address of the Clergy to the Archbishop of York, 59.
Convention of 1785 to the English Archbishops, 72.
Convention of 1786 to the English Archbishops, 74.
Reply of the Archbishops, 97.
Admission in the English Church, 225.
Alienation of real Church property, 158.
Bishop's consent when necessary, 159, 185, 204.
Consent of Bishop and Standing Committee, 159.
Rector necessary, 182, 184.
Cannot be made in absence of Rector, 204.
When consent of members of the Parish necessary to, 150, 159.
Can only be made for Church purposes, 160.
Alterations in Book of Common Prayer, 71, 82.
American Church, Organization of, 65, 85.
Annual Parish meetings. (See Parish meetings.)
Answer to Archbishop's letter, 98.
Antecedent Obligation of the American Church 92, 96, 103.
Ante-Reformation Law, Continuation of, 30.
Apostles' Creed, 74, 94.
Archbishop of Canterbury, Letter of, 99.
York, Address to, 59.
Archbishops of Canterbury and York, Address, to, 72, 74.
Reply of, 97.
Articles of Constitution as set forth by Convention of 1789, 77.
Of Religion, 88.
Assistant Minister, Rector to appoint, 285.
Vestry's power in appointment of, 285.
No right to be present at Vestry meetings, 286.
Athanasian Creed, 89.

Attendant, Definition of regular, 140.
Augustine, Arrival in Britain of, 24.
Instructions of Pope Gregory to, 25.

B

Benefice, admission to a, 225.
Presentation to a, 226.
Institution into a, 226.
Induction into a, 227.
Bishop, the source of authority in his Diocese, 171, 184.
Diocesan jurisdiction in the, 118, 222.
Powers of a Rector descend from, 185.
His consent necessary to incorporation of a Church, 119.
When necessary to alienation of Church realty, 159, 185, 204.
When his duty to accept Letter Dimissory, 209, 211, 217.
When not required to accept it, 209, 216, 219.
To give Certificate of Transfer, 210.
To give notice of acceptance of Certificate, 210.
Minister cannot officiate as Rector without such Certificate, 210.
Cannot officiate in his Diocese without license of, 210.
His right to inquire into qualifications of a Minister, 211 213, 229.
To decline to transmit Certificate of Election of Rector of record, 215, 222.
To inhibit Minister from officiating in his Diocese, 220.
His consent necessary to the election of a Rector, 169, 172, 177, 184, 207, 213, 216, 219.
The ultimate arbiter in dissolution of rectorship, 242, 245.
His consent, when necessary, to placing ornaments in Church, 277.
Can alone act judicially in case of person repelled from the Holy Communion, 282.
Bishop of London, Diocesan of Colonial Church, 47, 50, 61.
Bishops, House of, when organized, 79.
Synod of British, 25.
Book of Common Prayer, alterations in, 71.

Book of Common Prayer, no material alterations from English, 82.
Preface of, 83, 92, 103.
Revision of, 80.
When set forth and established, 83.
Brittanic Church, 24.
Brockway Case, 219.
By-laws, Vestry may make, 167.

C

Call and Election of Rector, 168, 207.
Canon Law, Force of Foreign, 30, 33, 35.
When introduced into England, 32.
Of Church of England, 31, 41, 94, 106, 111.
A part of Common Law of the Colonists, 40.
Birthright of Colonists, 40.
Canon on Music, 180, 268.
Why enacted, 268.
Its history, 271.
Canon 18 of Title I. of the Digest considered, 211.
Intent of the Canon, 216.
Canons, Code of, adopted, 76, 80, 85.
Of 1603, 35, 94, 95, 163, 212, 289, 299, 300.
Construction and interpretation of, 181, 212, 216, 218.
Casting vote in case of a tie, 199 255.
Certificate of Change in Name of Corporation, 151.
In Number of Vestrymen, 150, 188.
Of Election of Wardens and Vestrymen, 126, 148.
Of Delegates to Diocesan Convention, 149.
Of Rector, 208.
Form of, 208.
Of Incorporation of a Church, 126.
To be filed, 126.
How executed, 127.
What it should contain, 126, 128.
To be transcribed in Parish record book, 129.
Of Transfer of a Minister, 210.
Form of, 210.

Certificate of Transfer of Communicants, 299.
Change in Number of Vestrymen, 150, 187.
Change of Name of Corporation, 151.
Choir, definition of, 272.
Under control of the Rector, 179, 182, 268, 275.
Choirmaster, when not a regular contributor, 144.
Church edifice in possession of Rector, 183, 236, 257.
Incorporation of. (See Incorporation of Churches.)
In the Colonies, date of, 33.
In Connecticut, 55, 59, 66.
Maryland, 45, 47, 49, 52, 66, 307.
Massachusetts, 56, 69.
New Jersey, 56, 60.
New York, 43, 53, 306.
Pennsylvania, 53, 68.
South Carolina, 44, 48, 53.
Virginia, 43, 52, 228.
Of England, Canon Law, when introduced into, 32.
Part of Colonial Common Law, 40.
Common Law of, 17, 22, 103.
Part of Colonial Common Law, 17, 103.
Concordat of American Church with, 96, 105.
Discipline of, retained by American Church, 89, 93, 96, 98, 101.
Encroachments of Roman Church on, 27.
Identity of Colonial Church with, 50, 55, 104, 108.
Church in the States with, 51, 57, 61, 64, 81, 86, 100, 104.
American Church with, 86, 88, 104.
Induction Office of, 225, 227, 237, 239.
Law of, at time of emigration of Colonists, 35.
Laws in force in, 36.
Liturgy of, retained by American Church, 81, 87, 89, 94
(See also, Ecclesiastical Law of Church of England.)
Church property cannot be alienated without consent of Rector, 182, 184, 256.
Cannot be alienated in his absence, 204.

Church property, alienation of, only for Church purposes, 160, 166.
When Bishop's consent necessary, 159, 185, 204.
Standing Committee's consent necessary, 159.
Consent of Parish necessary, 150, 159.
Power of Vestry over the, 155, 157, 162.
Vestry to keep in good order the, 163.
Church Tribunals, when their authority recognized by Civil Courts, 176, 177, 221, 250.
Vestry have control of revenues of, 165.
Churchyard, in the possession of the Rector, 183, 256, 263.
Civil Courts, when they will interfere in Ecclesiastical matters, 176, 221, 250.
Clergyman, trial of a, 252.
Code of Canons adopted, 76, 80, 85.
Codes of Law in force in the American Church, 15.
Colonial Church, earliest date of, 33.
Commissaries to the, 47.
Diocesan of the, 47, 50, 61, 62.
Identity with Church of England of the, 50, 55, 104, 108.
American Church, 51, 58.
Induction in the, 224, 228.
Legislation of the, 43.
Colonies, Vestries in the, 306.
How modelled, 307.
Colonists, Law of the English Church at time of emigration of, 35.
English Common Law part of Common Law of, 17, 22, 103.
Statute Law part of Common Law of, 21.
Canon Law part of Common Law of, 40.
Subject to the laws of England, 19.
Commissaries to Colonial Church, 47.
Committee appointed to confer with Clergy of New England, 77.
Common Law, definition of, 21.
Of England, birthright of the Colonists, 19.
Part of the Colonial Law, 17, 22, 103.
What composed of, 21.
Ecclesiastical, 23, 36, 95, 104.
Part of Colonial Common Law, 22, 40, 103.
Common Prayer, alterations in Book of, 71.

Common Prayer, Preface of Book of, 83, 92.
Revision of, 80.
Set forth and established, 83.
Common Seal, Vestry may have and use a, 156.
Communicants, Wardens to be, 126, 299.
When Wardens to give letter of transfer to, 299.
Communion. (See Holy Communion.)
Concordat of American Church with Church of England, 96, 105.
Connecticut, Church in, 55, 59, 66.
Consecration of Bishops Provoost, Seabury, and White, 74.
Constitution of American Church proposed, 72.
When adopted, 76, 97.
Constitutions, Legatine and Provincial, 27, 35.
Contributor, definition of a regular, 142.
Convention of 1784, 69.
1785, 70, 97.
1786, 73, 75, 98.
1789, 75.
Corporate capacity of Wardens and Vestrymen, 161.
Corporation, component parts of, 153.
When complete, 129.
Name, how changed, 151
Proceedings affecting title to be in, 159.

D

Delegates to Diocesan Conventions, 132.
How elected, 149.
To Special Conventions, 150.
Deputies to General Convention of 1789, powers of, 76.
Diocesan of Colonial Church, 47, 50, 61, 62.
Discipline defined, 93.
Of Church of England retained by American Church, 89, 93, 96, 98, 101.
Dissolution of rectorship, 241.
Divine service under exclusive control of the Rector, 264, 308.
Duke of York, laws of the, 43, 306.

E

Ecclesiastical Common Law, 23, 36, 95, 104.

Ecclesiastical Common Law a part of Colonial Common Law, 22, 40, 103.
Ecclesiastical Law of England in 1607, 34, 36.
Of force in the American Church, 16, 36, 40, 45, 50, 58, 61, 81, 86, 89, 92, 95, 102, 105, 107, 110, 180, 212, 262, 263.
Modifications of, 36, 111.
(See also Church of England)
Election of Delegates to Diocesan Conventions, 132, 149.
Special Conventions, 150.
Wardens and Vestrymen, 125, 145, 300.
Notice of, 120, 131.
How conducted, 125, 133.
When by ballot, 125.
Qualifications of, 126, 145.
Qualifications of voters, 124, 139.
Certificate of election of, 126, 148.
When to be recorded, 126, 148.
Of Rector. (See Rector.)
Encroachments of Roman Church on Church of England, 27.
England, Church of. (See Church of England.)

F

Foreign Canon Law, 30, 33, 35.
Fundamental principles of Convention of 1784, 69, 71.
The Church, stated, 170.

G

General Convention of 1789, 79, 86, 88, 92, 228.
1792, 85, 88, 92, 94.
1804, 228, 232.
1808, 94, 103, 233.
1814, 90, 96, 103, 235.
Power to enact Canon requiring Bishop's consent to election of a Rector, 178.
Gorham Case, 212.
Gregory's Reply to Augustine, 25.
Guilds under control of Rector, 266.

H

Henry VIII., Acts of, 28.
Holy Communion, Office of, altered, 83.
Right of Rector to repel from the, 279.
Rector to give notice to the Bishop, 280.
Not a judicial Act, 281, 283.
Can only repel for specified causes, 282.
In case of personal wrong, 284.

I

Identity with English Church of Colonial Church, 50, 55, 104, 108.
Of Church in the States, 51, 58, 61, 64, 81, 86, 104.
Of American Church, 86, 88, 104.
Illegal votes to be challenged, 125, 138.
If not challenged, to be received, 138.
When election vitiated by, 125.
Incorporation of Churches, 117.
Purpose of, 117.
Benefits of, 118.
Prerequisite to, 118.
Consent of Bishop necessary, 119.
Of Convention where required, 119.
Of Standing Committee, 119.
Mode of procedure, 119.
Notice to be given, 120.
How given, 120.
Contents of notice, 120.
Place of meeting, 121.
Hour of meeting, 121.
Meeting to be held at hour named, 121.
Quorum of meeting, 121.
Officers of meeting, 122.
Presiding officer, 122.
To appoint tellers, 125.
To reject illegal votes if challenged, 125.
When election not vitiated by illegal votes, 125.
To declare result, 126.

Incorporation of Churches.
Scope of meeting, 123.
Qualifications of voters, 124.
Conduct of meeting, 125.
Election by ballot, 125.
Polls, how long to remain open, 125.
Certificate of election to be made, 126.
What to contain, 126, 128.
How acknowledged, 127.
To be filed, 126.
Terms of officers elected, 129.
When complete, 129.
Induction. (See Office of Induction.)
Inheritance defined, 18.
Inhibition, right of Bishop to issue order of, 220.
Institution. (See Office of Institution.)
Integral parts of a Vestry, 153, 194 254.
Features when lost, 202.
Intent of American Church as to continuing force of English Ecclesiastical Law, 92, 96.
Interposition of civil tribunals in Ecclesiastical matters, 176, 221, 250.

J

Jennings' Case, 247.
Judges of Election, how appointed, 138.
Judicial authority in the Bishop, 171, 184.
System of the Church, 252.
Junior Warden, 301.
Jurisdiction in the Bishop, 118, 222.

K

Keys of the Church, Rector's right to the, 256, 304.
Wardens no right to the, 304.

L

Lands, alienation of. (See Alienation.)
Law, Ante-Reformation, continued after Reformation, 30.
A subject of inheritance, 19.

Law, English Ecclesiastical. (See Ecclesiastical Law.)
Laws of the Duke of York, 43, 306.
Legatine constitutions, 27, 35.
Legislation, Colonial, 43.
Letter of Archbishop of Canterbury, 99.
Letters Dimissory, 209, 216.
Form of, 209.
Liturgy of Church of England retained by American Church, 81, 87, 89, 94.
London, Bishop of, Diocesan of Colonial Church, 47, 50, 61.
Lynd *v.* Menzies Case, 260.

M

Majority of votes necessary to elect, 148.
Of Vestrymen, what constitutes a, 197.
Mandamus, writ of, to compel Rector to call a Vestry meeting, 191.
To attend Vestry meeting, 205.
To compel Wardens and Vestrymen to attend a Vestry meeting, 203, 308.
Marriage, English Canons on, 95.
Maryland, Church in, 45, 47, 49, 52, 66, 307.
Massachusetts, Church in, 56, 69.
Meetings of Parish. (See Parish meetings.)
Vestry. (See Vestry meetings.)
Minister, when a qualified Minister, 175, 211.
His right to be transferred to another diocese only an Ecclesiastical right, 222.
Cannot officiate as Rector without certificate of transfer, 210.
Without license of Bishop, 210.
In a Parish without consent of Rector, 267.
Is accountable to the Ecclesiastical authority, 174.
Vestry cannot maintain a deposed, 166.
Trial of, 252.
Election of, as Rector of a. (See Rector.)
Modifications of English Ecclesiastical Law, 36, 111.
Music of the Church under exclusive control of the Rector, 267.

N

Name of Corporation, how changed, 151.

Name of Induction changed to Institution, 233.
New Jersey, Church in, 56, 60.
New York, Church in, 43, 53, 306.
Nicene Creed, 74.
Notice of Annual Parish Meeting, 131.
What it must contain, 131.
How given, 132.
Object of, 132.
Meeting to incorporate a Church, 120.
What it must contain, 120.
How given, 120.
Special Parish meeting, 150, 186.
Vestry meetings, 191.
How given, 191.
Object of, 193.
Time of, 191.
Number of Vestrymen, how changed, 187.
Resolution of Vestry to be submitted to Parish meeting, 150, 188.

O

Oath of office of Wardens and Vestrymen, 147.
Object of notice of Parish and Vestry meetings, 132, 193.
Office of Induction in Church of England, 224, 227, 237, 239.
Colonial Church, 224, 228.
American Church, 229.
Its meaning and effect, 225, 227.
Intent of Church in setting it forth, 229.
Name changed to Institution, 233.
Intent of Church in change of name, 234.
Institution, 173, 184, 223.
Similar to English Office of Induction, 224, 237, 257.
Same as former Office of Induction, 233.
Consequences that follow from its use, 236.
Confers no new right on a Rector, 224, 240, 259.
Why not more generally used, 239.
Wardens and Vestrymen, term of, 129.
Officer, Presiding. (See Presiding Officer.)

Officers of meeting of incorporation, 122.
Parish meetings, 122, 138.
Organ under control of the Rector, 274.
Organist, right of Rector to appoint, 270.
Vestries, rights in appointment of, 270.
Under control of the Rector, 267, 270.
Ornaments of the Church under control of Rector, 275.
When permanently placed, Church goods, 278.
The Bishop's power in the matter, 277.
The Vestry's power in the matter, 277.
Wardens have no power over the, 276.

P

Parish, annual meeting of, 131.
Notice of, 131.
Contents of, 131.
How given, 132.
Its object, 132.
Purpose of, 132.
Place of, 133.
When illegal, 131.
Questions that may be considered at, 133.
Quorum at, 134.
Presiding officer at, 135, 255.
To appoint tellers, 125, 138.
When to appoint judges of elections, 138.
When to reject illegal votes, 138.
The returning officer, 139.
Qualifications of voters at, 139.
Proceedings to be recorded, 139.
Qualifications of Wardens and Vestrymen, 126, 145.
Certificate of election, 148.
When to be recorded, 148.
Special meetings of, 149, 186.
Name, how changed, 151.
Meeting to incorporate. (See incorporation of Churches.)
Parishioners, consent to the alienation of Church realty, 150, 159.
Not *cestuis que trust*, 159.

Parishioner's right to a seat in the Parish Church, 293.
Pennsylvania, the Church in, 53, 68.
Pews, title to, in corporation, 164.
Under control of the Vestry, 155, 164.
Pew holder has only a right of occupancy, 164.
May maintain action against intruder, 165.
Length of time rented, 164.
Deed necessary to pass title, 164.
Plurality of votes does not elect, 148.
Polls, how long to remain open, 125.
Powers of the Deputies to General Convention of 1789, 75.
Rector. (See Rector.)
Vestry. (See Vestry.)
Wardens. (See Wardens.)
Prayer Book of Church of England, 81, 94.
Alterations of, by American Church, 71, 82.
Preface of, 83, 92, 103.
Revision of, 80.
Presiding Officer of Parish Meetings, the Rector, 135, 255.
To appoint tellers, 125, 138.
When to appoint judges of election, 138.
To decide as to qualifications of voters, 138, 255.
To reject illegal votes, 125, 138.
To declare result, 126.
The returning officer, 139.
To sign certificate, 149.
When a Warden may be, 138.
Vestry meetings. (See Vestry meetings.)
Principles of the Church of England, 171.
The Saxon Church, 26.
Property of the Church. (See Church property.)
Proposed Book, 71, 81, 97.
Proposition, Statement of an undeniable, 58, 104.
Provincial Constitutions, 27, 35.
Provoost, Consecration of Bishop, 74.

Q

Qualifications of Delegates to Diocesan Conventions, 149.
Voters, 124, 139.

Qualifications of Voters, Vestry cannot alter, 167.
Vestrymen, 126, 145, 307.
Wardens, 126, 145, 299.
Qualified Minister, What is a, 211, 213.
Right of Bishop to be satisfied that a Minister is a, 175, 211, 213, 219.
Voters eligible for office of Vestryman, 146.
Questions that may be considered at meeting of Incorporation, 123.
Annual Parish meeting, 133.
Quorum at meeting of Incorporation, 121.
Annual Parish meeting, 134.
Vestry meetings, 193, 202, 254.
Necessary for transaction of business, 161, 202.
Withdrawal of member cannot destroy, 198, 203.

R

Realty. (See Church property.)
Record Commission of 1821, 25.
Rector, Call and election of, 168, 207.
Vestry have the power to elect, 168, 207.
Not an exclusive power, 169, 178, 207, 219.
To give notice of election to the Bishop, 208.
Notice to be recorded, 208.
Form of notice, 208.
When Bishop may decline to transmit notice for record, 215.
Call should be in writing, 179, 207.
When complete, 207.
Consent of Bishop necessary to make election and call complete, 169, 177, 207, 213, 216, 219, 221.
Letter Dimissory, 209.
Form of, 209.
Void if not presented in six months, 209.
Duty of Bishop to receive, 209.
Exception in case of rumors affecting character, 209.
Other exceptions, 211.
Canon relating thereto considered, 210.
Certificate of transfer to be given, 210.

Certificate of Transfer of Rector, Form of, 210.
Cannot officiate as Rector until received, 210.
Right of transfer only an Ecclesiastical right, 222.
When date of canonical residence begins, 210.
Institution of, 223.
Its effect, 224, 236, 240.
Confers no new rights upon a, 224, 240, 259.
Receives his powers from the Bishop, 173, 184.
Called for life, 179 240, 243.
Cannot resign without consent of Parish, 179, 236, 241, 245.
How dismissed, 179, 236, 241.
Vestry cannot dismiss, 179, 203, 240, 245.
Nor investigate charges, 203.
Nor reduce his salary, 179, 203, 243.
Bishop may dismiss, 241.
Has a right to a hearing before dismissal, 245, 250.
Discussion of canons *in re* dissolution of Rectorship, 124.
An integral part of the Vestry, 153, 194, 254.
Has the right to call Parish and Vestry meetings, 190, 254.
Duty to call such meetings, 191, 254.
When he may be compelled to call such meetings, 191.
Duty to attend, 205.
The presiding officer at all meetings, 122, 135, 197, 255.
Must be present to render meeting valid, 193, 196, 254.
When meeting legal without, 204.
Cannot destroy quorum of meeting by withdrawal, 198, 203.
Adjourn meeting on his own motion, 198.
His right to decide as to qualifications of voters, 255.
To appoint tellers, 125, 138.
Judges of election, 138.
The returning officer, 139.
Has a right to vote at Parish meetings, 255.
Vestry meetings, 255.
To give the casting vote in case of a tie, 199, 255.
To submit to the meeting all questions presented, 201.
Exceptions, 201.
May sue out writ of mandamus to compel a Vestryman to attend Vestry meeting, 203, 308.

Rector has exclusive control over spiritualities of a Parish, 155, 264.
Services of the Church, 264, 308.
Sunday-school, 266.
Guilds, etc., 266.
Music of the Church, 180, 267.
The organ, 267, 274.
The Church edifice, 162, 236, 238, 256, 258, 262, 304.
Has the right of freehold in realty of the Church, 183, 257.
To the keys of the Church buildings, 162, 256, 304.
Of control over all buildings used for Church purposes, 162, 163, 264, 304.
To forbid a Minister from officiating in his Parish, 267, 286.
To appoint organist and members of the Choir, 179, 270.
To determine as to character of Choir, 181, 274.
To control the ornaments of the Church, 275, 277.
To appoint assistant Minister, 285.
To repel from the Holy Communion, 279.
But must give notice to the Bishop, 280.
Not a judicial act, 281, 283.
Can only repel for specified causes, 282.
In case of personal wrong, 284.
Must give Wardens access to Church, 304.
Church property cannot be alienated without consent of, 182.
Nor in his absence, 204.
Has no power to incur debts binding on the Parish, 167.
No longer Rector if deposed, 176.
Duties of a, 286.

S

Salary of Rector cannot be reduced by the Vestry, 179, 203, 243.
A valuable property right, 179, 244.
Saxon Church, principles of, 26.
Seabury, Consecration of Bishop, 59, 74.
His assent to Constitution and Canons of 1789, 77.
Seal, Vestry may make and use a common, 156.
Select Vestry in the English Church, 306.

Senior Warden, 301.
Sexton when not a regular contributor, 144.
Special Parish meeting, 149, 186.
Notice, how given, 150, 186.
What it must state, 151, 186.
How conducted, 151, 186.
S. P. G. in Foreign Parts, 46, 48.
South Carolina, the Church in, 44, 48, 53.
Spiritual affairs of a Parish under control of Rector, 155, 264.
Standing Committee, consent of, to alienation of Church realty, 159.
Consent necessary to incorporation of a Church, 118.
States, the Church of England in the, 51, 57, 64.
Identity of the Church in the, 57, 61, 86, 104.
Action of the Churches in the, 59, 64.
Statute Law of England part of Colonial Common Law, 17, 21, 40, 103.
Rule as to the interpretation of, 212, 218.
Subscriptions for religious purposes, Vestry may compel payment of, 166.
Sunday-schools under exclusive control of the Rector, 266.
Synod of British Bishops, 25.

T

Tellers of Election, to be appointed, 125, 138.
Terms of office of Wardens and Vestrymen, 129.
Time, polls to be kept open, 125.
Title to Church property in the Vestry, 157.
How impaired, 160.
Toleration Act, 44.
Transition period of the Church, 64.
Trial of a Minister, 252.
Trustees, Wardens and Vestrymen as, 119, 154, 237.
Must act in their corporate capacity, 161, 307.
No individual authority to bind corporation, 161, 307.

V

Vacancies in a Vestry, how created, 186.
How filled, 186.

Vestry, definition of, 153, 306.
Name, how derived, 306.
In the Colonies, 306.
American Church, 153.
On what modelled, 153, 306.
Composed of three integral parts, 153, 194, 202, 254.
Corporate Trustees, 154, 161.
Can only act in a corporate capacity, 161.
In meetings regularly called, 161.
Their powers stated, 155.
Special powers, 154.
Title to Church property vested in the, 157.
Have custody of Church property under the Rector, 162.
Their power to alienate Church realty, 158, 182, 204.
To fix rental of pews, 164.
To enforce payment of subscriptions, 166.
To contract debts, 167.
To make and use a common seal, 156.
To make by-laws, 156, 167.
To erect Parish buildings, 155, 163.
To elect a Rector, 156, 168, 207.
Not an exclusive power, 169, 175, 178, 184, 207, 213, 216, 219.
To request institution of a Rector, 156.
In appointment of organist and choir, 179, 182, 270.
Of assistant Minister, 285.
Regarding the ornaments of the Church, 278.
Over the revenues of the Church, 165.
The disbursements of Church moneys, 166.
Have no control over spiritualities of the Parish, 155, 264, 269.
Music of the Church, 180, 269.
Organist and choir, 181, 270.
Rector integral part of, 153, 194, 202, 254.
Cannot remove a Rector, 179, 203, 240, 245.
Reduce Rector's salary, 179, 203, 243.
Investigate charges against a Rector, 203.
Maintain a deposed Minister, 166.
Dispose of Church realty in absence of Rector, 204.

Vestry cannot divert Church property to other uses, 160, 166.
Alter qualifications of voters, 167.
Vacancies, how created, 186.
How filled, 149, 186.
Definition of a major part of, 303.
Duties of a, 156, 164.
To keep Church property in good order, 163.
To give notice to Bishop of election of a Rector, 208.
Vestry Meetings, how called, 190, 192.
Notice of, 191, 193.
How given, 192.
When legal without notice, 193.
Right of Rector to call, 190, 254.
To preside, 197, 255.
To vote and give the casting vote, 199, 255.
No right to adjourn meeting, 198.
When Wardens may call a, 190, 254, 302.
Vestrymen may call a, 190, 254.
Quorum at, 193.
Necessary for transaction of business, 202.
Presence of Rector necessary, 193, 196, 254.
When may be compelled, 205.
When legal without Rector, 204.
Majority of Vestrymen necessary, 197, 202.
Duty of president to submit questions presented, 201.
Of members to attend, 203, 308.
Mandamus will lie to compel attendance, 203, 308.
Conduct of business at, 202.
Vestrymen, election of, how conducted, 125, 132.
Qualifications of, 126, 146, 307.
Certificate of election of, 148.
Oath of office, where required, 147.
Terms of office of, 129.
May call a Vestry meeting, when, 190, 254.
When presiding officer at Parish meetings, 138.
Have no individual powers, 161, 307.
Exception, 307.
No control over services of the Church, 265, 308.

Vestrymen cannot resign without consent of Vestry, 186.
Cannot destroy quorum at meeting by withdrawal, 198, 203.
Number, how changed, 150, 187.
Certificate of change, to be made, 188.
To be filed, 188.
May be compelled to attend Vestry meetings, 203, 308.
Duties of, 308.
Virginia, the Church in, 43, 52, 228.
Vote, to be received unless challenged, 138.
If illegal, will not vitiate election, when, 138.
Majority necessary to elect, 148.
Voters, qualifications of, 124, 139, 144.
Regular attendants, 140.
Contributors, 142.

W

Wardens in the Church of England, 289.
Office of ancient date, 290.
Duties in Church of England, 291.
Same in American Church, 295, 297.
Qualifications of, 126, 145, 299.
How appointed or elected, 133, 146, 299.
Senior and Junior, 301.
Terms of office, 129.
Certificate of election, 148.
Filing of, 148.
When Vestry meetings may be called by, 190, 254, 302.
One must be present to constitute legal Vestry meeting, 194, 303.
Duty to attend Vestry meetings, 203.
May be compelled to attend, 203, 308.
Cannot destroy quorum by withdrawal, 199.
Resign without consent of Vestry, 186.
Have custody of the Church under the Rector, 256, 304.
No right to the keys of the Church, 257, 304.
No control over the services of the Church, 265.
Authority subordinate to the Rector's, 162.
To give Certificate to communicants where no Rector, 299.

Wardens to collect the alms of the congregation, 299.
To give notice to Bishop of election of Rector, 299.
Form of notice, 208.
Must act together, 302.
Duties of, 297.
White, consecration of Bishop, 74.

Y

York, address to the Archbishop of, 59.
Laws of the Duke of, 43, 306.
And Canterbury, Act of Convention of 1786 sent to the Archbishops of, 100.
Address sent by Convention of 1785 to, 72.
Of 1786 to, 73.
Reply thereto by the Archbishops of, 97.

INDEX TO APPENDICES.

Form of Notice of meeting to incorporate a Church..... 321
" Notice of annual election..... 323
" Certificate of election of Wardens and Vestrymen..... 324
" Entry of election in Book of Minutes... 324
" Certificate of Lay Deputies to Diocesan Conventions. 326
" Petition to Bishop and Standing Committee for permission to alienate real Church property..... 327
" Application to the Bishop for consent to establish a Mission..... 329
" Application to the Bishop for consent to organize a new Parish..... 330
" Consent of Bishop and Standing Committee to alienation of Church property..... 331
" Notice of Organization..... 331
" Notice of intention to become a Postulant..... 333
" Postulant's application to the Standing Committee for recommendation as a Candidate for Holy Orders. 334
" Certificate of Minister and Vestry..... 334
" Certificate to be laid before Standing Committee if the applicant be a Minister of another Christian body 336
" Testimonial of recommendation by the Standing Committee..... 336
" Candidate's application to the Standing Committee for recommendation to the Bishop for Ordination to the Sacred Order of Deacons..... 337
" Certificate of a Presbyter..... 337
" Certificate of Minister and Vestry..... 337
" Testimonial of the Standing Committee (Deacon's Orders)..... 339
" Candidate's application for Ordination to the Priesthood..... 339
" Certificate of Minister and Vestry (Priest's Orders)... 340
" Testimonial of the Standing Committee (Priest's Orders)..... 341
" Notice to the Bishop of election of a Rector or Assistant Minister..... 343
" Letter Dimissory..... 343
" Certificate of Transfer..... 343
Forms for Commendatory Letters..... 344